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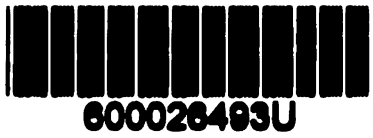
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THE

MILITARY FORCES AND INSTITUTIONS

OF

GREAT BRITAIN AND IRELAND.

THE

MILITARY FORCES & INSTITUTIONS

OF

GREAT BRITAIN AND IRELAND:

THEIR

Constitution, Administration, and Government, Military and Civil.

BY

H. BYERLEY THOMSON, Esq.,

OF THE INNER TEMPLE,

AUTHOR OF "THE LAWS OF WAR AFFECTING COMMERCE AND SHIPPING."

LONDON:

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1855.

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PREFACE.

In the present work, the Author has made it his object to present a comprehensive and accurate, though necessarily general, account of all matters relating to the Military and Civil Constitution, Administration and Government of the Military Services of Great Britain; and also of the Laws relating to the Army, the Marines, the Militia, and the various corps of Volunteers. His aim has been, also, to perform this task in such a manner as to render the book interesting to the general reader, as well as useful to the military officer.

More than thirty years ago, an intelligent officer* of the Artillery of France produced the first work, and up to the present time the only one, descriptive of the Military Forces of Great Britain; then holding, by right of their recent victories in the

* M. le Baron Charles Dupin.

Peninsula and at Waterloo, the highest position as an Army. The book of M. Dupin was remarkable for its accurate and extensive knowledge. It was essentially a military work, as it described only the military characteristics of the British Army, and entered into discussions of a nature purely technical, with respect to its machinery, effectiveness, and moral force. This book was produced in a period of profound peace, and yet met with a favourable reception both in France and England.

The war against Russia, and the glorious achievements and the unfortunate condition of the British Army in the Crimea, have created in the public mind an active and living interest in the military service. The present therefore, appears to be a fitting moment to offer to the public a full yet concise account of the Organization, Administration, Government, and Laws of the Military Forces and Institutions of Great Britain.

Much has been said and written on these subjects during the past session, both in Parliament and in the public journals; yet it is impossible not to arrive at the conclusion that very little is known to

the public at large of this now attractive subject of inquiry. The object of the Author has been, therefore, to present to the general and non-professional reader a clear, concise, and intelligible account of our Army and Militia; at the same time entering (farther than the mere military portion of the subject,) into the History, Civil Administration, Constitution, and general character of the system of organization by which the discipline of the Military Force is maintained in its efficiency; thus supplying clear and intelligible information upon all questions relating to the Army, that must naturally become subjects of discussion during a time of war.

It would be impossible to compose such a work for the use of the public without producing much fresh and varied information, serviceable also to military men. While aiming, therefore, to make his work popular, the Author has, at the same time, endeavoured to give it a character of practical utility, for the purposes of the military profession.

The literature of England is not deficient in military works, but the Author believes that a comprehensive book of the nature of the present

has never before been attempted. Until lately, the term "Military Law" has always been understood to include only the Law of Courts-Martial; and on this subject we have the treatises of Fraser-Tytler (Lord Woodhouselee), McArthur, Adye, Kennedy, James, Hughes, Napier, and lastly—the text-book of the present day—the work of Captain Simmons. Of these, the earliest work is perhaps the best; notwithstanding it has diminished in value by the lapse of time. Mc Arthur's was for a long time the standard work on the subject; though now, in the opinion (it is believed) of military men of the present day, superseded by the more detailed labours of Mr. Simmons.

All these works, however, though professing to be confined to one subject, at the same time attempt to treat of the Criminal Law of the country; an object clearly beyond the experience of the writers who have taken up Courts-Martial, and a subject impossible to do justice to, within the limits naturally assigned to them.

On other branches of Military Law the Author is not aware of any writer but Mr. Harris Prendergast, of the Equity bar; whose excellent work

on the "Law relating to Officers of the Army," has, we understand, been heartily received by the Service; nor of any work on the general organization of the Army, except the careful and accurate volume by Mr. Stocqueler, intituled the "British Officer:" which, however, relates principally to promotions, allowances, and pay.

But in addition to these sources of information, the Parliamentary Blue Books contain a large and hitherto unused mass of information relating to the Service, that has never been systematically brought together in a consecutive form. In these papers we have the evidence of such men as the Duke of Wellington, Sir A. Dickson, Lord Raglan, and many other distinguished officers, as to the working of the Army system; requiring, however, to be extracted from the answers to myriads of interrogatories. The present writer does not pretend to have furnished all the information relative to the subject that might be obtained, but he has presented all that is essential to a complete comprehension of it; including, he believes, much that is both new and important.

Besides the above, much information needful for

a work like the present has been opened out by the publication, within the last few years, of complete volumes of the Queen's Regulations for the Army, Royal Warrants, and Orders.

The plan of the FIRST PART of this work has been arranged so as to bring these more prominently before the reader, and also to keep constantly in view the aim of producing a consecutive and condensed exposition of the subject. The Author has availed himself of the information contained in previous treatises on his subject; but these have been taken only as guides, the original authorities (wherever practicable) having been carefully referred to: especially in the legal portions of the book.

The SECOND PART of the volume includes a consecutive description of the Militia and Volunteer forces, with an accurate Digest of the Statutes relating to these bodies of troops. Since the general Militia statute of 1802, no work of the kind has been brought before the public; notwithstanding that the reconstruction of the Militia and the probable permanency of its present organization, have rendered some book on the "Laws relating to the

Militia" an absolute necessity; for although a very complete collection of the Statutes* relating to the Militia is now before the public, yet nothing but a closer study than most Militia or Military Officers would be inclined to give to the subject, could render the originals intelligible to the reader.

The following Works have been principally consulted by the Author; although many others have been incidentally referred to:—

M. DUPIN'S "Force Militaire d'Angleterre," 1822.
ENCYCLOPÆDIA BRITANNICA. Article "Army."
STOCQUELER'S "British Officer," 1845.
PRENDERGAST'S "Laws relating to Officers in the Army."
TYTLER (FRASER) "On Military Law," 1808.
MC ARTHUR "On Military and Naval Courts-Martial."
ADYE "On Courts-Martial."
KENNEDY "On the Practice and Principles of Military Law," 1839.
SIMMONS, "Practice of Courts-Martial," 1843—Third Edition.
NAPIER (SIR CHARLES) "Remarks on Military Law and Flogging."
HOUGH "On Courts-Martial."
GRIFFITHS "Notes on Military Law."
HUGHES "Duties of a Judge Advocate," 1845.
"Law Magazine," Vol. 14.

* Saunders' Militia Acts.

"Parliamentary Report on Military Punishments," 1837.
"Parliamentary Report on the Civil Administration of the Army," 1837.
"Parliamentary Reports on Military and Naval Promotions," 1840.
"Parliamentary Report on Military Promotions," 1854.
"Army Estimates" for 1854.
"Army List," October 1854.
"Queen's Regulations for the Army," 1844.
"Royal Warrant," 1848.
"Mutiny and Military Acts. Articles of War," 1854.
"Statutes relating to the Militia."
"Law Reports."

P.S.—Since the first part of this work was in in print, the Militia have not only been embodied, but also have been mobilized by the Militia Foreign Service Bill. The remarks of the Author respecting the Militia, in the "Description of the British Military," must be regarded as modified by the above circumstances. Under the present Administration, the Office of Secretary-at-War has not been filled up; but as most of the powers of that officer are Parliamentary, and not the creation of prerogative, the description of them contained in this volume will be correct, until they are altered by Act of Parliament.

H. BYERLEY THOMSON.

TEMPLE, Feb. 20th, 1855.

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INTRODUCTION.

This Introduction naturally commences with an attempt to estimate the character of the British Soldier. For this purpose it is necessary to advert to the difference which exists between the British Army and that of every other power in Europe, not only in its composition, but in the duties it is called upon to perform.

The first great distinction between the British and other European Armies consists in the manner in which its ranks are filled. The British Army is entirely composed of persons who enter voluntarily into the service for a given term of years. The enlistment of the British may, therefore, be considered as the devotion of the greater, certainly the best portion of a man's life to the service into which he freely enters; and two thirds, at least, of that portion, as far as respects the regiments of the line, are spent in the Colonies.

On the other hand, the Continential Armies are filled by conscription; not indeed excluding voluntary enlistment, but admitting it under certain regulations, as one mode of performing a duty required of all subjects of the state. The law in France is stated to be, "that every Frenchman shall

be called upon to serve his country at the age of twenty; nevertheless, any one who wishes to enter the service may enlist at the age of eighteen, and, having satisfied what the law requires, he is exempt from future conscription."

The service thus maintained, lasts seven years, whether under conscription or enlistment; but it may be voluntarily prolonged for a certain time, and under certain conditions: the conscript may, if he thinks fit, find a substitute; but he remains responsible for that substitute in case of desertion, during a year. This manner of filling the ranks brings into it a considerable number of persons of good education; and it is stated that that circumstance enables so many commissions to be given to non-commissioned officers.

In Prussia, "all the subjects are called into the service of the state at the age of twenty years, and serve for three years in what is called the disposable force." They are then sent home until they have attained the age of twenty-five years, and constitute the army of reserve. At the age of twenty-five they are exempt from active employment, and become incorporated into the *landwehr* of the first ban till they are thirty-two, and in that of the second ban till they are thirty-five. The *landwehr* is a sort of Militia; the first ban being brought together for a short time every year for exercise, and the second only liable to service within the interior, in the event of a war, or of invasion of the country by an enemy. In order to alleviate, amongst the higher and opulent classes, the obligation which the law imposes upon every Prussian of serving personally as a private soldier, and in order to reconcile this obligation with the possibility of acquiring a knowledge necessary to other professions, the government permits voluntary enlistment, subject to certain conditions.

Under different regulations, the same principle of the

right of the state to the service of every one of its subjects, is enforced in every country in Europe, by something in the nature of conscription, or forced enlistment for a limited period. The adoption of this principle must have the effect of creating a strong feeling in favour of the military service. It becomes in truth the favoured and favourite profession in those countries where every man has either been or actually is a soldier, and it is honoured accordingly. If a young man be called from his home to serve his prescribed time, his father has been so before him, and it is not considered a hardship.

The mode of filling the ranks of the British and other European Armies being then so entirely different, how is it with regard to the service these latter are called upon to perform, even for the limited periods for which their numbers are engaged? None of the great powers of Europe, excepting France, have colonies, and she does not employ her regular armies in the few colonies, (Algeria excepted), which she possesses; therefore, excepting in the case of some active service, the foreign soldier is never called upon to quit his native country. The British soldier, on the contrary, besides being subject to the hardships, privations, and dangers of actual service, when necessary, cannot avoid the long separation from his family and friends consequent upon the order to embark for the colonies; nor the wear and tear of life and constitution which await him when arrived there.

The natural consequences of these disadvantages on the part of the British Army, both as to its original formation, and the services it is applied to, is, that those persons of a better class, who, as we are told, are to be found in the ranks of other armies, are rarely found in ours; except in instances where a young man has been induced by mis-

be called upon to serve his country at the age of twenty; nevertheless, any one who wishes to enter the service may enlist at the age of eighteen, and, having satisfied what the law requires, he is exempt from future conscription."

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fortunes, brought on most commonly by his own folly or intemperance, to escape from them by enlistment. It is found that those who have so enlisted do not commonly turn out the best soldiers, or the most easy to bring under proper discipline; nor do they set an example of good conduct to their comrades.

The great body of our recruits consists of the inhabitants of large towns, and of agricultural labourers. These last appear generally to enter the army in consequence of some family difficulty, or some scrape in which they are involved, or from some temporary difficulty of obtaining work; when they have undergone the necessary preparation of the drill, they become the best and most trustworthy soldiers. Those who come from the manufacturing districts and large towns are too frequently the most idle and dissolute; they require all the means in the power of their officers to correct the intemperate and vicious habits in which they have indulged, and to teach them that subordination is the first duty in the profession into which they have entered.

In an Army thus composed, it is scarcely necessary to point out the evils of a relaxed state of discipline. It has not within itself those moral means which are supposed, and probably with truth, to exist in an Army recruited by conscription of all classes, namely, the example and advice afforded by the more educated to those who are less so. The constant vigilance of their officers in giving advice, and in correcting by slight and minor punishments the first approaches to insubordination, joined to the prompt application of such a punishment as is likely, while it corrects the offender, to make him an example in the eyes of his comrades in cases of a more serious nature, can alone make such an army tolerable, not only to the inhabitants of the country in which it is, but even to the individuals of that Army itself.

A very few persons in a company can, and very often do, by their violence and bad conduct, render the lives of the rest uneasy and uncomfortable.

It cannot be necessary to state the necessity of the strictest discipline when in the field and in face of the enemy; with it, a British Army is equal to any enterprise; without it, the character and habits of our soldiers are such as to lead them into great excesses, and frequently to render them unfit for any useful purpose. Nor will any one who is aware of the duties imposed upon the Army, when quartered at home, or in the colonies, doubt the necessity of its being kept in a state of the strictest discipline.

A Standing Army has always been an object of jealousy in this country; nothing can reconcile the feelings of an Englishman, who prizes his personal liberty so highly, to its existence, *but the fact* of its being in such a state of discipline and restraint as shall secure the absence of that tone of superiority which the armies of foreign powers are apt to assume in their own countries. To perform the duty of assisting the civil power, in the way required of the British soldier, is a most difficult task. The least impatience in the midst of the most gross provocation, or any rashness even when personally assailed, or after an order has been given to act, may lead to the most fatal consequences at a moment of excitement.*

And yet, some few special cases excepted, the British Army has always borne the highest character both at home and abroad. This was evinced in the south of France, when our army followed the French Army through their own country; and then it was admitted by the enemy that the discipline, forbearance, and good conduct of the British

* Report from the Commissioners for Inquiring into Military Punishments, 1837.

troops to the inhabitants of the country, were infinitely superior to that of the French Army towards their countrymen. A remarkable instance of this occurred at that very time. After the battle of Toulouse, Sir Henry Fane marched the whole of the cavalry, some artillery, and the *materiel* of the Duke of Wellington's army through France in two columns, and embarked them at Boulogne and Calais. Discipline was so well maintained, that the French Government offered General Fane the distinction of the Legion of Honour. In Spain, the people came home to their houses when the English were to occupy them, and left them when the French were to occupy. A general system of plunder, and every kind of irregularity, existed in the French Army of the Peninsula.*

The conduct of the Army when in the British Isles, every person must have had an opportunity of witnessing, and must be well aware of the admirable way in which it performs its duty when called upon to aid the civil power.

To pass on from the character of the soldier generally, to the position of the officer, it must be observed that the effective Army at the conclusion of the war of 1815 was 219,852 men, which was reduced as low as 91,756 in 1822. These reductions necessarily increased the half-pay lists, until they contained upwards of 10,000 officers, costing the country £974,000 a year. However, by filling vacancies in the effective, by transfers from the non-effective or half-pay list, the natural equilibrium between the effective and non-effective has gradually been restored; until in 1854 the number of officers on half-pay and retired full-pay had fallen as low as 2,699.

* Report from the Commissioners for Inquiring into Military Punishments, 1837. Evidence of Sir H. Fane, Lord Hardinge, and the Duke of Wellington.

This system, however, made promotion slow. In the lower regimental ranks employment was certain for any officer desiring it; but the moment he attained Field-Officer's rank, his chances of employment were very much diminished. This necessarily resulted from the constitution of a regiment, which consisted, for the most part, of ten Companies, with their ranks of officers, each numerically the same. Thus the ten Ensigns became ten Lieutenants, the ten Lieutenants became ten Captains; but for the ten Captains there were but two majorities to be attained, and for the two Majors but one Lieutenant-Colonelcy. A proportion of these ten Captains, therefore, retired upon half pay; that is, if they did not sell out, and there they but substituted another person. There was thus always in process of creation, a fresh though a limited redundancy of field officers, standing between the Captains and General Officers, staying promotion; themselves too old for active service by the time they were on the General's list. Thus, in respect of age, nearly all the Lieutenants were below 30 years of age; the majority of the Captains above that age, but below 35; the majority of the Majors divided nearly equally at the age of 40; similarly, the Lieutenant-Colonels divided at some age between 45 and 50. Upon an examination, the return of the ages and services of the Colonels promoted to be Major-Generals in 1851, showed an average of 60 years.

The Army, it was remarked, could not be said to be in an efficient condition when, in the grade from which the Commander must be chosen, there were no officers below the age, after which but few men possess the physical strength necessary for service in the field; thus, either inexperienced Commanders were employed, or if experienced their experience was wasted for want of physical power. In the last war, with the exception of Lord Lyndoch and Sir T. Picton, they

had no General officers above 40 years of age: they were all between 35 and 40. The Duke of Wellington was Major-General at 33, and Lord Combermere as early as 31.

Generals must necessarily spend days together in the saddle, visiting, as they must do, all parts of an extended line of operations; where the most opposite reports have to be balanced and decided, the most elaborate combinations rapidly conceived and executed, in order to move and feed vast bodies of men in an unwilling or hostile country; to find the means of transport for supplies of provisions and ammunition; to provide for the sick and wounded; to create, in short, with such materials as may be found, an organization, any failure in which may result in a terrible sacrifice of human life, and may in the most critical moment baffle the best conceived combinations. These labours require the exercise of the highest faculties, and also physical strength and powers of endurance to keep those powers unimpaired by bodily fatigue and privation.

The pressure of war undoubtedly urged upon the government the necessity of making a change, with a view to remedy evils that are now felt in their full force.

Another objection to the past system of promotion was, that in the majority of cases it caused officers to remain unemployed for several years before they become Major-Generals. There were comparatively few officers who did not pass a great part of the interval of time between Lieutenant-Colonel and Major-General, on half-pay. More than half were for ten years and upwards, many twenty years, in retirement, and one case fell little short of thirty-seven years. Brevet only slightly modified these evils; that mode of advancement being intended to answer two distinct objects: the creation of a class of officers eligible for commands, and the reward of past services. Only a small

proportion of officers who become Major-Generals, and subsequently Lieutenant-Generals and Generals, were ever actually employed in these ranks; reward for past services, therefore, was the great object of a brevet. So far as regards the first and most important of these objects, that of furnishing officers fit to hold commands, the system had not worked well.

The remedy for the evil was looked for in another direction; in a more free exercise of the royal power of giving temporary rank to officers, with a view to their being appointed to commands that could not otherwise be filled up satisfactorily.

It was recommended, by a Commission, that sat in the early part of this year, as a principle, that when the services of an officer are required to take the command of any portion of the troops as a General Officer, the fittest officer that can be found for the duty should be selected, without reference to seniority, from the whole of the officers who have attained the rank of Colonel or a superior rank. They made several other suggestions, in order to provide efficient officers, which have since been embodied in a Royal Warrant, (October 16th, 1854,) and which will be found in the Appendix.

It may be well said, that at no time has a generous military spirit been more equally diffused amongst the English people, than at present. The enthusiasm that was raised in 1808, by the view of a great and partially successful wrong wrought upon the Spanish people—by the general arming of the people of England and the excitement produced by threats of invasion; by the profound interest kept alive by the Continential War and the triumphs of Maida and Alexandria—was tempered by a deep-seated discontent; the mechanic whose face flushed with natural pride at the successive glories of his country, hated the government that guided its

armies to victory; nor were there wanting those around him to suggest unpatriotic thoughts, and even to advocate the cause of the enemy. But now we are all united; the happy result of a just legislation: the Chartist is silent for want of an audience; party has almost disappeared; the educated and intellectual adventurer can no longer rouse the mob for the worst purposes of faction; Ireland is tranquilized; and above all, the whole people is imbued with the sense of a serious common danger. The quarrel and cause of the Turk has become almost secondary, in the feeling that the advancing steps of Russian serfdom on civilized Europe must now for ever be arrested.

The spirit which was fostered in 1808 by numerous military establishments, the Militia and the Volunteers, has now seized spontaneously on all ranks: it is no longer the animation of the young man created by the spirit of adventure, the alternate danger and idleness of military life, or the gay costume of the soldier. The same feeling to strike a blow on the side of England extends into all ranks, and has a practical end in the female, as well as in the male sex. The medical man has been known to leave a lucrative practice to minister to the sick and wounded; the nurses that aid him are ladies delicately bred, wealthy, and the daughters of the higher classes. The necessary expenses of the war are voted without a murmur; and for charitable purposes money is being poured forth like water.

This enthusiasm is in favour of an army, that in moral character, discipline, and courage, never had an equal. The vast improvements commenced by the Duke of York in the discipline and organization of the army, and the improved military education which nearly every officer has received, give every advantage for the display of that physical strength and undaunted moral resolution, which in every

age has formed the great characteristic of the British soldier.

The British General has not had to go into this war trusting only to the national courage, the experience of a few, and the hopes of that practical knowledge which a few months campaigning readily gives; but he is backed by officers accomplished in the art of war—by study and parade, at least, and often by experience on the bloody fields of India, accustomed to manage and direct scientific and powerful engines of destruction, as ready as ever to undergo with cheerfulness the fatigues of a campaign, and more versatile, because better and more generally instructed than their predecessors.

The Troops differ only from those of old in their improvement: the Artillery, brought to the highest perfection, is still the best in the world, in equipment of guns, in the ammunition train, and in the coolness and practice of the gunners; the Infantry, in the steadiness and precision of their fire, the constancy they display in danger, their calmness in anger, and the terrible vehemence of their charge with the bayonet, are still the first. In moral character they far surpass the soldier of the past age; less given to intoxication, anxious for education, and sharing in common with others, the improved Christian feeling of their country, they have given the world a proof of their chivalry in refusing to regard the wounded enemy as having less claim on their sympathies than the wounded amongst their own ranks. This war has witnessed its Talavera, and at no long distance of time may see its Waterloo; but we may reasonably hope, will be wanting in a parallel to the terrible days that followed the fall of Badajoz.

The army has no longer to make a reputation; it goes now to battle with a resolute confidence nearly equal to that

"which six years of uninterrupted success, engrafted on natural strength and fierceness, contributed to render the army of the Peninsula invincible." It has an enemy to encounter, formidable in numbers, discipline, and skill, and having an ancient reputation for a kind of dogged courage, stronger in resistance than attack. If a Fabian policy ever becomes the plan of the Russian commanders, of all enemies in the world they have met those most able to match them in patience and endurance. The Russian is, from his very peculiar character, perhaps more likely to become used "to the sudden, deafening shout, rolling over the field of battle full and terrible, and followed by the strong unwavering charge," than any other possible adversary; but that he will be able to imitate the original with any force is extremely improbable: in this respect alone the Allied armies will always maintain a superiority.

With such a cause;—such troops, sustained by their own and their country's enthusiasm, ordered with so perfect a discipline, and armed with unmatched engines of warfare, may not the free nations fairly hope to triumph over the enslaved? And when the end comes—if, under the God of Battles, it comes in victory—the joy that the nation will feel in the glory of its arms will be untouched with the many unhappy feelings that damped the joy of returning peace in former times.

If the lessons of the last forty years be not forgotten in the clash of arms, peace will not return to "a dissatisfied "people, gaining peace without tranquility, greatness without "intrinsic strength, with a future dark and threatening;" but to a people grateful for a release from war, and ready to return to its natural labour in the cause of universal progress in knowledge, freedom, and religion, and universal emancipation from the chains of ignorance, slavery, and sin.

DESCRIPTION

OF

BRITISH MILITARY FORCES.

Military power of the Sovran.

By the constitution of Great Britain, the Sovran is the Supreme Head and Captain-General of the Army. The orders of the Sovran, and of that power alone, are to be obeyed, as long as they are in harmony with the fundamental laws of the land.

To the Sovran belongs the power of declaring war, and concluding peace; although no treaty is binding unless signed by a responsible minister. This minister, in giving his name to the act, becomes responsible to the country, with his head, for the preservation of the national honour and the public interests.

On a proper vote by parliament, for the purpose, the Sovran can grant, or rather perhaps apportion, subsidies to an ally or indemnity to an enemy. The power of declaring war, however, is very limited, by the necessity of obtaining the approval of the nation, of applying to the nation for means, and the authority that exists in parliament in limiting the number of troops to be raised. But when the army is once established by parliament, its supreme command and organization is in the hands of the Crown. All employments, promotions, and military honours, proceed from that power; at the same time, a *responsible minister* is the only

Administration.

Administration.

accountable medium of communication between the Sovran and the public force. It is thus that the Crown "can do no wrong." In general, the responsible ministers are the Secretary of State for War, and the Home Secretary; though it has happened at times, that the heads of other departments have held the position of war ministers. The Secretary of State for War has the power, in respect of war, formerly held by the Secretary of State for War and the Colonies. He is a member of the Cabinet, and is charged with a general power of issuing instructions for the conduct of the army; with the promotion and direction of military expeditions; and the direction of the troops stationed in the colonies and dependencies of the British Crown.

The Secretary of State for the Home Department, also a member of the Cabinet, has the superintendence of the training and service of the militia, and the direction of the troops stationed in the United Kingdom.

The Secretary at War, with various powers, is, in his principal duties, the Financial Minister of War.

The Commander-in-Chief of the Queen's forces is the chief executive military officer of the army, in respect of the organization, instruction, and discipline of the army.

The Master-General of the Ordnance, (a Cabinet minister,) directs the *personnel* and *materiel* of the artillery and engineers.

The duties and powers of these various officers, will be found successively treated of in a subsequent portion of this book.

The Commander-in-Chief is aided in giving effect to the army, by his Staff, consisting of his Adjutant-General and Quartermaster-General, and their subordinate officers. The arms, ammunition, and military stores of every description, are supplied under the authority of the Board of Ordnance, of which the Master-General is the head.

The sustenance of the army rests in the hands of the Commissariat, a department of the Treasury which it has been proposed to place under the control of the Master-General of the Ordnance. Administration.

The Board of Audit and the Commissioners of Chelsea Hospital, it will be seen, have important duties in the administration of the civil affairs of the army.

This brief mention of the administration and command of the army will be found more expanded in the chapters on "Civil Administration" and "Military Command."

In describing the organization of the Military Forces of the United Kingdom, a description of the troops naturally places itself first.

The Military Forces of this country, like most of its institutions, have risen into their present form in a singularly uncertain manner, from various necessities, and now rest for their legal constitutions on various and widely-different parliamentary sanctions.

Some portions of the Forces have an origin hidden in antiquity, others a recent parliamentary commencement; some, connected with events of the deepest interest in English history, scarcely maintain a practicable position, whilst other portions, new and untried, are in full power, and ready for action.

The Military Services, if they may be fairly so termed, are these:—the Household Troops; the Infantry of the Line; the Cavalry of the Line; the Ordnance Corps, consisting of Artillery, Engineers, and Sappers and Miners; the Marines; the West India Regiments; and the Colonial Corps. These compose the Queen's Regular Troops, and consist of persons who make arms their profession. The Troops.

In addition to the regular forces there are, as before mentioned, several bodies of troops regulated by their own

The Troops. separate laws, and which are raised or collected together merely for the purpose of being drilled or exercised, in order to aid or to supply the places of the regular troops in the time of war, invasion, rebellion, or other great emergency; these are the Militia; the Yeomanry Cavalry; the Fencibles; the Volunteer Infantry; the Dockyard Battalions; the Enrolled Pensioners; and a civic corps enjoying the title of the Honourable Artillery Company.

As all these various bodies of troops or services are fully described in the body of this work, it is unnecessary to relate their origin, or special laws and organization, in this place.

All troops, whether regular or not, are generally trained to four different kinds of service, and constitute different *armes*, as it is termed. These are Infantry, Cavalry, Artillery, and Engineers. In this country, the Artillery and Engineers are joined under the general name Ordnance, but are quite distinct in training and effective operation. The Engineers consist of a body of highly educated officers, and are assisted in a peculiar manner, as will be seen, by a superior class of soldiers termed Sappers and Miners. The Marines, though trained to act as Infantry on land, are, in point of fact, intended to act principally at sea, where they are trained to assist in working the Marine Artillery.

These various *armes* and services take precedence according to a special regulation, whether in order of battle, in duties of honour, or those of parade. The order of precedence is as follows:—1. Life and Dragoon Guards. 2. Horse Artillery. 3. Cavalry. 4. Foot Artillery and Sappers. 5. Foot Guards. 6. Royal Veterans. 7. Infantry of the Line, according to their number and order of precedence. 8. The Marines rank next to the 49th regiment. 9. The Rifle Brigade next to the 93rd regiment. 10. The Militia regiments take rank after those of the Line, according to their respective numbers, as fixed by lot.

Each regiment has its distinguishing number, and many have a special name, derived either from the province or town where the regiment was originally raised; or taken from the name of the nobleman who founded the regiment, or the name of a Highland clan, or granted by the Crown as a mark of honour. Many also bear mottoes, regimental badges, and the names of their victories, on their colours. The Troops.

The first and principal *arme* of every army is its Infantry. It has not the brilliancy of movement of Cavalry, or the science and mechanical knowledge required for Artillery; but its universal adaptation, limited only by the energy and versatility of the human frame, creates a means of executing military operations attainable only by other *armes* in certain situations and favourable circumstances. At the same time, it is the *arme* most easily raised; the readiest in training, cheapest to maintain, and presenting great facilities for transport. But though Infantry is of the highest importance in an army, as an effective body, yet, from the necessity of greater knowledge and a more enlightened training for perfection in other arms, the individuals of the Cavalry and Artillery hold perhaps a higher position than the individuals of the Infantry, and are therefore generally placed first by writers on military affairs. The formations and movements of Infantry, however, as at present practised, adapting them to every species of warfare and to all probable situations and circumstances of service, and being well calculated to show forth the brilliancy of military tactics, based on mathematical and scientific principles, place it first among the engines of military action. The word "Infantry" is said to be taken from one of the Infantas of Spain, who assembled the first well-ordered body of foot soldiers possessed by the Castilian Monarchy, and led them to victory against the Moors. They received the name of "Infantry" Infantry.

The Troops. in memory of those events. The regular Infantry are divided into Foot Guards and Infantry of the Line.

Footguards. The Foot Guards may, with justice, be looked upon as the original nucleus of the British Army. Henry VIII. established the Yeomen of the Guard, now known as the "Beef-Eaters," in 1485, solely for the defence of his own person; and rather, perhaps, even at that time, as the king's domestic servants than as soldiers. Their number was at first fifty, and seems never to have exceeded two hundred. A kind of regular troops, however, chiefly accustomed to the use of Artillery, was maintained in the very few fortified places where it was thought necessary or practicable to keep up the show of defence; the Tower of London, Portsmouth, the Castle of Dover, the Fort of Tilbury, and, before the Union of the Crowns, Berwick and some other places on the Scottish border.

The Foot-Guards were first raised in 1660, when the command of the first regiment was given to Thomas, Lord Wentworth; that of the second to General Monk, then Duke of Albemarle; and that of the third to the Earl of Linlithgow. The second regiment is always called the Coldstream Guards, from a market town in Berwickshire where it was first embodied. This regiment is older than the first, having been raised sooner, and commanded by General Monk; from whom it derived its name of Monk's regiment or corps, and in compliment to whom it was made one of the three royal regiments of Guards, by Charles II.

The first in order, however, is now the Grenadier Guards; it consists of 3 battalions, in all 32 companies, and at present numbers 2600 (though in peace generally of about 2560) rank and file, 96 commissioned officers, and 206 non-commissioned officers, trumpeters, and drummers, making an effective force of 2902 men.

The Coldstream Guards and the Scots Fusiliers follow next. These two regiments each reckon 2 battalions, 20 companies, and 1600 rank and file, with 61 commissioned officers, 127 officers, &c., not commissioned; making in all 1788 effective men. The Household Brigade, as it is called, thus consists of 3 regiments, 7 battalions, and 6478 soldiers, including officers and men. The Troops.

Each regiment is commanded by a Colonel, a Lieutenant-Colonel, with a Surgeon-major, and a Solicitor; each battalion by a Major, with a Surgeon and his assistants; lastly each Company, by a Captain, one or more Lieutenants, and an Ensign.

There are at this moment 99 regiments of Infantry of the Line, to which must be added the Rifle Brigade. The 1st or Royal Regiment; the 60th or King's Royal Rifle Corps; and the Rifle Brigade, have 2 battalions each. The ordinary strength of a regiment of Infantry of a single battalion, is 750, and where there are 2 battalions, 1250. One battalion, with which the senior Lieutenant-Colonel is stationed, is called the Head-quarter battalion, the other is called the Reserve. There are, thus, 103 battalions in the Infantry of the Line, each capable of being raised, by the estimates of the present year, to 1000 rank and file each, with the exception of the 12th regiment, which reckons 1200;* making the rank and file of the Infantry of the Line on the war-footing 103,200. Each battalion has about 40 officers, the 12th 50; and from 74 to 79 non-commissioned officers, trumpeters, and drummers; the 12th having 92. Infantry of the Line.

The rank and file, therefore, on a war footing, reach 110,192, and with officers of all ranks, attain the effective force of 121,994 men. This may be yet increased. At the close of the last war, very few regiments reckoned less

* *Sic* in the Estimates for the Army, 1854.

The Troops. than 2 battalions; and one, the 60th, (Duke of York's,) attained no less than 8 battalions, numbering in all, 9236 officers and men, in itself a little army; there were besides 5 additional regiments, (100 to 104). The household troops alone reached the extraordinary force of 12,321, and the whole regular army could number nearly 200,000, excluding many thousands of fencibles, foreign corps, and militiamen.* Of these battalions, 8 are Highland regiments; 4 are termed Fusiliers, and wear wings on the shoulders in place of the cotton epaulets; the 23rd, which bore the first shock of the battle of Alma, being termed the Royal Welsh Fusiliers. There are also 6 regiments of Light Infantry, and 2 regiments, (4 battalions,) the 60th, and the Rifle Brigade, of Rifles. The remaining regiments bear no distinctive title beyond the name of the regiment.

Each battalion of the line is in general divided into 10 companies, each company having a Captain, a Lieutenant, and Ensign, or two Lieutenants; there are, however, in general, 13 Lieutenants, and from 8 to 10 Ensigns in each regiment. It is also commanded by a Colonel, Lieutenant-Colonel, and two Majors; and has a staff for transacting the business of the regiment, consisting of an Adjutant, Lieutenant, Quarter-Master, Paymaster, Surgeon, and Assistant-Surgeon, thus raising the number of commissioned officers to about 42; but as the Colonel does not serve with the regiment, and the Adjutant is generally a Subaltern in the regiment, the average number is 40. On foreign or very dangerous service, and generally in India, there are two Lieutenant-Colonels, and 22 Subalterns.

The non-commissioned officers of a regiment of Infantry, who are invariably selected from the ranks, consist of Lance-Corporals, (who wear stripes, but do not receive extra pay,) Corporals, Sergeants, Colour-Sergeants, Paymaster-Ser-

* Army Estimates, 1814.

geants, (who are entrusted with the duty, under the Captains, of paying the Companies,) Quartermaster-Sergeants, and Sergeant-Majors. The Troops.

Two, three, or four battalions united under the order of a Major-General, form a *brigade;* two brigades form a *division,* of which a Lieutenant-General has the command. In the Peninsular war, there were three brigades to a division; two British and one Portuguese, with generally a brigade of guns attached to them. In the campaign of 1815, the division was composed in the same manner, a Hanoverian being substituted for a Portuguese brigade.

Amongst the Queen's regular forces must be reckoned the Royal Marines, a corps that ranks between the 49th and 50th regiments. Little is said about them in this place, as, in consequence of the corps being governed by a separate mutiny act, they are fully described in a subsequent chapter. It will only be mentioned here, therefore, that they number about 11,000, and are divided into four divisions, having head-quarters respectively at Chatham, Portsmouth, Plymouth, and Woolwich; there are also several Artillery companies attached to the corps. The Marines serve at sea as well as on shore; every man-of-war carrying a body of Marines proportionate to its dimensions and character. Royal Marines.

The Volunteer Corps reckon between 14,000 and 15,000 men; they of late years have been gradually decreasing. In 1835, they numbered nearly 20,000; it is not improbable that the present war may increase their force again. They are chiefly Yeomanry Cavalry. Volunteers.

The Dockyard Battalions were created some years back, in order to increase the home defensive force. The superintendents, clerks, and labourers in the Dockyards have been Dockyard Battalions.

The Troops. formed into brigades and battalions, officered, (royal commissions being granted to each officer), and placed upon the same footing as other Volunteer corps. The Colonelcy of each corps is filled by a naval officer of rank. There are in the different brigades, Lieutenant-Colonels, Majors, Captains, Lieutenants, an Adjutant, and a Surgeon; the number of regimental officers depending entirely upon the strength and importance of each brigade. The brigades are named from the Dock-yards where they are employed. The costume is dark blue, with facings of red.*

Pensioners. There is a large body of Enrolled Pensioners who are annually called out for training, and number 18,500 men; 2,000 of which serve in the colonies.

Cavalry. We now come to the Cavalry. The Cavalry of the Guards is composed of the Life-Guards and Horse-Guards. They derive privileges of rank and pay from the body-guard originally raised by Charles II., from amongst the impoverished gentlemen who had followed the part of his father during the civil war. They were, however, disbanded in 1788, George III. retaining only the skeleton of a regiment. A new corps was then raised, composed almost entirely of recruits. At present there are 3 regiments; two of Life-Guards, clothed in scarlet, and the Horse-Guards, in blue. Until 1788 the body-guards had more than triple the pay of the Dragoons; at present, a Guardsman only gets threepence a day more than a common trooper, and a Foot Guard only a penny a day more than a private of the Line. Each regiment consists of 8 troops of rank and file, officered by a Colonel, Lieutenant-Colonel, 2 Majors, 8 Captains, 8 Lieutenants, 8 Cornets, an Adjutant, a Surgeon and assistant, and a Veterinary Surgon. The

* Stocqueler, 133–4.

numbers of each regiment are 351 troopers, 53 non-commissioned officers, trumpeters, and drummers, and 32 officers, making an effective force of 436 persons of all ranks. The Troops.

The Cavalry forms a very considerable part of the British Army. During the late war it equalled in number one sixth of the Infantry, and adding to this body the Volunteer Cavalry of the three kingdoms, the total exceeded 80,000 men; but the cavalry voted this year was in all only 11,946. Great Britain is, of all countries of Europe, the richest in horses fitted for every species of service; and, peopled with a peasantry accustomed to ride from early youth, it presents peculiar facilities for raising Cavalry corps. There are 24 corps of Cavalry of the Line, who all go by the general name of Dragoons: of these, 7 regiments are entitled Dragoon Guards. These 24 regiments are classified as Heavy Cavalry and Light Cavalry; there are 11 regiments of Heavy Cavalry attired in scarlet; 9 of Light Dragoons, of which 5 regiments are Hussars, whose uniform is blue; and 4 regiments are Lancers, of which 3 wear a blue uniform, and 1 scarlet.

Each regiment of Cavalry, except when on a war footing, comprises a Colonel, Lieutenant-Colonel, Major, 6 Captains, and 13 Subalterns,—7 of whom are generally Lieutenants and 6 Cornets; which, together with the regimental staff make up 27 officers. On a war footing there are 2 Lieutenant-Colonels, 2 Majors, 9 Captains, and 26 Subalterns.

The strength of the non-commissioned staff and troopers varies from 350 to 450; but is increased on a regiment going into field service. During the last war the average force of the regiments was as high as 900 men; some amongst them were even 1200 strong.

The Cavalry of an army in the field, opposed to an enemy, is a highly important part of its force. Upon its activity, watchfulness, and the intelligence of its officers,

The Troops. depend the freedom of the other parts of the army from unnecessary fatigue and annoyance, and the power of husbanding their energies for the critical operations of a campaign.

The mere physical force of Cavalry in action, forms only a part of its valuable duties on actual service; seeking intelligence by their patrols; their watchfulness of the movements of the enemy, in order to prevent unnecessary alarms, annoyances, or surprises of the Infantry; their careful covering of the encampments and the positions of the army; and their protection of convoys, baggage, &c., are duties peculiarly appertaining to the Cavalry of an army, which require the development of all the good qualities of soldiers. Great care is taken in mounting the Cavalry; the number of Cavalry being small in reference to the amount of force annually voted by parliament, it is of the utmost importance that this portion of the army should be of the best description.*

Guides. The General of an army in the field sometimes forms a corps of mounted guides; that which Wellington created in 1810 consisted, three years afterwards, of 3 officers, 28 non-commissioned officers, and 76 troopers. "Guides," says the regulations, "may serve in the common operations of marches; but near the enemy the eye and intelligence of the principal officers must determine the movements of the troops, and enable them to seize and improve every advantage."†

Waggon Train, &c. According to M. Dupin, "after the Cavalry, and as part of it, must be reckoned the Royal Waggon Train, organized during the late war, and placed under the direction of the

* Queen's Regulations, 371, art. 1.

† Regulations, 1844, 56.

Quarter-Master-General. In time of war each squadron of Cavalry was provided with a forge-cart with four horses and two drivers, from the Waggon-Train. This equipage was furnished by order of the Quarter-Master-General, to whom the Colonels of Cavalry are required to address themselves for all the wants of this species of service. On the peace establishment, there were only two forge-carts, with four horses and two drivers to a regiment of Cavalry."* The Troops.

Under the term Artillery is comprehended the Ordnance of the British Army, and the officers and men entrusted with its scientific direction and employment. The British Artillery is one of the finest, if not the very best in Europe. All the improvements, however, which have raised the British Artillery to its present state of perfection, are the work of our own age. At the commencement of our share in the war of 1793, the various Ordnance equipments, as well as the whole composition of this branch of our military service, were of the rudest kind, and on the worst organized and most defective plan. The inefficiency of the whole system, indeed, was palpably betrayed whenever a force was required to take the field. The guns were dispersed among the Infantry at the rate of two pieces to a battalion, thereby rendering it impracticable to employ them for their legitimate purpose,—the concentrating a powerful fire of numerous guns on any important point. They were also horsed in single team, which lowered the power of draught. The drivers were on foot with long whips, as were also the gunners. The ammunition was packed in large rough deal boxes; the waggons that conveyed it were heavy and ill-constructed; the march scarcely exceeded a foot-pace, and if increased speed were attempted before the enemy, the men came into action breathless and unable to serve their guns. Artillery.

* Dupin, 114.

The Troops.

But before the commencement of the Peninsular war, that active and able officer the late Major Spearman entirely re-organized this branch of the service; and it is to him that the country owes the origin of the present beautiful system of Artillery. The battalion guns were abolished, and the Artillery were brigaded, distinct from the Cavalry and Infantry, in six divisions of six pieces each; so that the fire of one or more of these powerful batteries could be readily concentrated on one point. A body of military drivers was organized, mounted on the near horses; and the gunners themselves, in the proportion of eight to each piece, were carried on the limbers and ammunition cars.

The equipment was lightened, so that the batteries could move at a gallop; the ammunition, packed in boxes on the cars and limbers, was always up with the gun, and the officers and men being mounted, or conveyed on the carriages, were sure of being brought fresh into action. Finally, a system of manœuvres for Artillery in the field was introduced, which gave order and precision in their movements, and established uniformity.

Notwithstanding the great improvements made of late years in the effectiveness of small arms, the importance of artillery can scarcely be exaggerated as a military *arme*. Under the present improved system, the troops of the artillery form a single corps, still styled a regiment, though during the last war it was raised to a strength of upwards of 24,000 men.

The Master-General of the Ordnance is the Colonel of the regiment; and a General officer, with the style of Deputy-Adjutant-General, performs the duties of chief of the Staff. He is not under the orders of the Adjutant-General of the British forces; he is even charged in the Ordnance with more extensive functions, which, in a general degree, include those of Quartermaster-General and Military Secretary to

the Commander-in-Chief. All communications from artillery officers to the Master-General are addressed through him. The Troops.

This *arme* is divided for service into troops and companies; each troop or company being complete in itself, and having no organization in the field analagous to that of a battalion or a regiment. The whole corps consists of one regiment, divided nominally into battalions, but the whole force is included in the same rollster. The promotion goes universally in every rank by strict seniority, according to the date of commission, not in the battalions, but in the regiment generally; except so far as this is varied by the Warrant of October 6, 1854, mentioned subsequently.

The command of battalions, corresponding to the colonelcies of regiments, is given to General officers, not by selection, but by seniority. There has been but one exception to this rule in the present century, and the practice of conferring these commands according to seniority, without reference to service, is now never departed from.

The Royal Regiment of Artillery ordinarily consists of 563 officers, and about 12,000 non-commissioned officers and men, including 1 Adjutant, and 144 non-commissioned officers and gunners of the Invalid Battalion, retained in the several garrisons and batteries; also one company of Royal African Gunners, at Jamaica, and one company of Gun-Lascars at Hong-Kong. There are 96 British Companies, each officered by a Captain, Second-Captain, 2 First-Lieutenants, and often 1 Second-Lieutenant. Each company has also a Company-Sergeant, 3 Sergeants, 4 Corporals, 4 Bombardiers, as well as a trumpeter and a drummer, and about 100 gunners and drivers. Every 8 companies form a battalion, so that there are 12 battalions, each commanded by a Colonel-Commandant, 2 Colonels, and 4 Lieutenant-Colonels. Each battalion has besides a complete regimental staff, similar to the staff of an Infantry battalion.

The Troops. Besides the Royal Artillery there is a brigade of Royal Horse Artillery, consisting of 7 troops, each troop with a Captain, Second-Captain, 3 First-Lieutenants, 2 troop staff Sergeants, 3 Sergeants, 3 Corporals, and 3 Bombardiers, and about 75 other men and artisans; making in all 44 officers and 648 non-commissioned officers and men. There is also a troop called the Riding House troop, consisting of 3 officers, a Captain, and 2 Lieutenants, and 31 non-commissioned officers and men. The privates of this troop are termed rough riders.

In aid of these forces is the Field train department, consisting of 7 officers, a medical department, of 47 surgeons, &c.* In several garrisons of the United Kingdoms, there are stationed 70 master gunners, with the artillery force, as detailed by the estimates. †

Engineers. The Corps of Royal Engineers consists of about 280 officers, comprising the Master-General as Colonel, 6 Colonels Commandant, 12 Colonels, 30 Lieutenant-Colonels, 48 Captains, 48 Second Captains, 96 First Lieutenants, 36 Second Lieutenants, an Inspector-General of Fortifications, with a first and second assistant, and an Assistant Adjutant-General. The Master-General has no salary as Colonel.

The Engineers are considered to form only a single regiment, and the Officers of this Corps are promoted by seniority. But the services required from Engineer Officers are of a very different nature from those of any other Officers of the Army; for except when in command of detachments of Sappers and Miners, the Officers of the Engineers have no privates under their orders, and the duties imposed

* The first has 1 Director General, 1 Assistant Director, 1 Commissary, 1 Assistant Commissary, 1 Clerk of Stores, 2 Conductors of Stores. The second, an Inspector General, Deputy Inspector General, 6 Senior Surgeons, 13 Surgeons, and 26 Assistant Surgeons.

† 1853.

upon them require that they should be commonly employed singly, or not more than two or three together, throughout the extensive dominions of the crown. The Troops

There is no power of sale of commissions in the Artillery or Engineers. The two Ordnance Corps do not enjoy, therefore, the advantages which this system, however anomalous in itself, has no doubt conferred on the Army, by quickening promotion, and facilitating the retirement from the service, of officers whose age or inefficiency, from ill health or other causes, has rendered them unfit for service. Again, the Ordnance has no temporary half-pay list; no officer being allowed to go on half-pay, except on the report of a Medical Board. Every officer who enters the Ordnance Corps remains in it for life, and continues on the full-pay list till certified by a Medical Board to be unfit for service. Nor can any officer, however brilliant his services, rise more rapidly than another to the higher ranks of his corps.

The result of this system necessarily is that the average age of the officers of the diffierent ranks of Ordnance Corps, is far greater than that of the officers in the corresponding ranks of the Army; nor is the average made up of that variety of ages which, within certain limits, is to be found in the ranks of the Army, and which gives to the public service the advantage of having a few officers of greater physical vigour than the rest, in each of the higher ranks.

The only corps that remains to be mentioned, is the corps of Royal Sappers and Miners, for general service. It consists of 3 officers and 2,182 non-commissioned officers and men. When on detachment duty they are commanded by the officers of the Corps of Engineers. The privates, (in all 1,791), are all artificers; including carpenters, masons, bricklayers, smiths, wheelers, coopers, collar makers, Sappers and Miners.

The Troops. painters, tailors, and miners. They are divided into 22 companies, with 5 Sergeants and 10 Corporals to each company. The Sappers and Miners are generally young men of good education, and are said to contain among their ranks many men of very superior acquirements. There are also 4 companies (consisting of 415 non-commissioned officers and men), employed on trigonometrical surveys. The service they engage chiefly in — besieging — is one of the most dangerous, as it is their duty to commence the trenches. *Sap*, from which they derive the name of Sappers, is a mode of excavating trenches for the siege of a fortress, which is adopted when the besiegers arrive within so small a distance of the covered way that the fire from thence becomes too dangerous to allow the men to work on the ground, without being protected by some covering objects, as gabions, placed between themselves and the enemy.

Peace Establishment. In estimating the number and force of the British Army, in relation to the power of the Empire, we can best form a notion of its normal condition, from a view of the establishment in the time of peace. The war-footing is of course constantly varying, according to the requirements of the hour, and bears no proportion to the prosperity of the Empire, or the extent of its dominion and commerce.

To arrive at a correct view of the Peace establishment it is necessary to examine the estimates, even as far back as 1836. In giving the numbers following, it must be observed, that there are always from four to five regiments of British Cavalry, and twenty-four regiments of British Infantry, serving in India, and in the pay of the East India Company; they number as a body of all ranks about 30,000, and are not included in the numbers that follow.

The highest number for the regular army, voted during

the period from 1836 to 1852, was in 1848-9, when it was 113,847; and the lowest was in 1835-6, 81,271; the average being 96,935. Of these the average number for home service is 53,688, and for the colonial service 43,254; the highest number for the home service being 72,508, in 1848-9, and for the colonial service 52,981, in 1842-3. The Troops.

During the same period of seventeen years, the highest number of the Ordnance Corps was 14,193; the lowest, 8,319 in 1835-6; the average being 10,482, of which rather more than one-third are sent to the Colonies, and the remainder retained for home service. So that the Peace establishment, which has been gradually increased from the year 1835 to 1852, averaged about 108,000. The establishment, however, previous to the present war, ranged as high as 113,000, thus—

	HOME.	COLONIES.	TOTAL.
Regular Army . . .	59,598	39,116	98,714
Ordnance	8,588	5,612	14,200
Totals	68,186	44,728	112,914

This number was further increased to about 174,000, by the addition of 18,504 Enrolled Pensioners (Home 16,554, Colonies 1,950); and about 14,626 Volunteer Corps, with 713 officers. To these might be added the 11,000 Marines, and about 60,000 Volunteer Militia, making a land force for peace purposes of about 245,000 effective men.

This large body of troops is distributed through the empire in the following manner: — the three regiments of household cavalry, whose ordinary duties are principally confined to their attendance on the Queen's person, consequently take no colonial duty whatever. Of the four and twenty regiments of cavalry, four are employed in Distribution of the Troops.

The Troops. India; and as those regiments cannot be relieved under a period of from fifteen to twenty years, more or less, it is evident that no prominent share of colonial service falls upon the cavalry. The division of Guards, consisting of seven battalions, are also in their ordinary duties confined to the Queen's person and palaces, and have never been called upon to perform any colonial service whatever. Of the one hundred and three regiments of infantry, seventy-nine are generally abroad, and twenty-six at home; of those seventy-nine abroad, twenty are employed in India; and those employed in India are not relieved under a period of eighteen to twenty years. Those employed in our other possessions ought to be relieved once in every ten years, but it has not always been found practicable to carry that intention completely into effect; it sometimes occurs that there are regiments which have been abroad ten or eleven years, while the regiments which must relieve them have been home a very short period, after a service abroad of not less than ten, and many above twenty years.

The Militia, of course, serve only in the United Kingdom; when called out for training, they are seldom removed from their own county, and then only to some adjoining county, for their own convenience in exercising; when embodied and called out for service, however, the Queen may order them to any part of the United Kingdom.

Officers. It has been mentioned that the officers of the Ordnance Corps rise by seniority. In the Cavalry and Infantry the system is different; the officers in these services generally purchase their commissions, up to the rank of Lieutenant-Colonel; subject to the rules that no one can hold a commission until he is sixteen years of age, or rise to the rank of Captain until he has been two years an effective subaltern, or to the degree of Major until he has been six years in the service.

Many young men are introduced into the army without purchase, as a reward for the successful prosecution of studies at the Royal Military College, Sandhurst, or as a mark of their Sovran's approbation of the services of their fathers. Gentlemen who have been Pages to the Queen invariably obtain commissions in the Guards when they attain the age of sixteen. The Troops.

The commissioned ranks of the British Army ascend in the following order:— Ranks.

Ensign, answering to Cornet in the Cavalry and to Second-Lieutenant in the Artillery, Guards, Rifle, and Fusilier regiments; Lieutenant, or in the Artillery, Guards, Rifle and Fusilier regiments, First Lieutenant; then follows the Captain, Major, Lieutenant-Colonel, and Colonel. After the rank of Lieutenant-Colonel has been attained, promotion formerly proceeded by Brevet, but now on a system detailed further on. There was no stated period for the issue of Brevets; but occasion was taken to raise a number of officers to the ranks of Colonels, Major-Generals, &c., usually once in six years, or when a coronation takes place, or on the birth of an heir-apparent, or a great achievement in the field, or when the higher ranks have been greatly reduced by the deaths of the incumbents.* Although Brevet rank still exists, general periodical Brevets are abolished.

Each regiment has a Staff, whose duties are explained in the chapter on "Regimental Command." This staff consists of a Paymaster, an Adjutant, a Quarter-Master, a Surgeon, (in the Foot-Guards a Surgeon-Major), generally two Assistant-Surgeons; in the Cavalry, generally a Veterinary-Surgeon. Each regiment of Foot-Guards has also a Solicitor, and in Ceylon 16 officers termed Subadars, and Regimental Staffs.

* Stocqueler, 31.

The Troops. 16 Jemadars. The number of regimental staff officers was, by the last estimates, 854; being 133 Paymasters, 148 Adjutants, 146 Quarter-Masters, 3 Surgeon-Majors, 145 Surgeons, 249 Assistant-Surgeons, 27 Veterinary Surgeons, and 3 Solicitors.

Officers—Numbers. The number of other regimental officers rated during the past session was 4,833; being 134 Colonels, 178 Lieutenant-Colonels, 256 Majors, 1,405 Captains, 1,829 Lieutenants, 156 Cornets, 875 Second-Lieutenants and Ensigns. The total number of officers in the British army is thus 5,719 of whom there are 1,221 in India, paid by the East India Company, leaving 4,498 for the service of the United Kingdom and the Colonies.

These numbers, though voted for an increased army, at the commencement of a war, are actually less than those voted in the previous year: and although the Army was increased in the same vote by more than 10,000, the commissioned officers were reduced by 163. The above numbers may therefore be taken as indicative of the normal force of commissioned officers.

General Officers. Above the Colonels, and not attached to any regiment except as Colonel of regiments, are the Generals. They are 1. Field-Marshal. 2. General. 3. Lieutenant-General. 4. Major-General. 5. Brigadier-General. The rank of Brigadier-General is temporary, and only conferred on the occasion of the assemblage of large forces for field or other service. The selection is made from the senior Colonels or Lieutenant-Colonels present with the force.

On the 30th of April last (1854), the General Officers' list comprised 134 Colonels of regiments; 92 on unattached pay, and 7 on half-pay, or 233 in all.

Each General Officer on service has a personal staff

nominated by himself. The officers composing it obtain permission from the Commander-in-Chief for their temporary removal from their regiments. The General's Staff consists of a Military Secretary, or an Assistant Military Secretary, according to the importance of the service or station, and of Aides-de-Camp.* The Troops.

The Commander-in-Chief of the army is assisted in giving it action by the Quarter-Master-General and the Adjutant-General, with their deputies and assistants. Their duties will be found in detail in the Chapters on "Military Command-Staff." The officers forming the General Staff, are what are strictly meant by Staff-Officers; but Brigade-Majors, Commissaries, Deputy and Assistant Paymasters-General, Inspector-Generals of Hospitals, their deputies and assistants, Staff-Surgeons, Chaplains to the Forces, Deputy-Judge-Advocates, Provost-Marshals and their deputies, are also reckoned as being on the General Staff.

A short abstract of the expense of the army just described, will not be uninteresting either to the professional or the general reader; a subject coming home alike to those who receive and those who pay. In placing this abstract before the reader, the estimates of the year 31st March 1853, to 31st March 1854, have been followed in preference to the estimates of the present year; which, having been voted with a view to war, would be an untrue indication of the expense the Empire is put to in maintaining national security under ordinary circumstances.

It is impossible to give an exact amount of the total expense of the army, as the Ordnance stores for the Sea and

* The Commander-in-Chief is allowed 6 Aides-de-camp; Commander of the Forces, (if commissioned as such) 4; General, 3; Lieutenant-General, 2; Major-General, 1; Brigadier-General, if employed in active operations in the field, but not otherwise, 1. On the duties of Military-Secretary to the Commander-in-Chief, see Appendix.

The Troops. Land services, issuing from the same department, are included in the same vote; but the whole expense of the effective and non-effective services of the Land Forces and the Ordnance, together with the Commissariat, may be stated at about £9,000,000. The nation, however, paid more than this, in further sums that were voted towards defraying the expenses of the Kaffir war, beyond the ordinary grants for the Army, Ordnance, and Commissariat services.

Taking the expense of the effective forces first, they may be put down thus:—

LAND FORCES.

Cavalry and Infantry - - -	£3,625,783
Staff - - - - - - - - -	162,897
Public departments - - - -	98,464
Military College - - - - -	16,888
Military Asylums, &c. - - -	18,020
Volunteer Corps - - - -	88,000
Total - -	£4,010,052

NON-EFFECTIVE SERVICES.

Rewards for Military Service -	£20,250
Army pay of General officers -	55,000
Full-pay of retired officers -	50,000
Half-pay & Military allowances	358,000
Widows' pensions - - - - -	117,637
Compassionate allowances - -	79,500
In-pensions - - - - - -	28,149
Out-pensions - - - - - -	1,235,800
Superannuation allowance - -	36,000
Total - - -	£2,014,964

In this year, therefore, the effective and non-effective services of the army cost £6,025,016; but of this sum the East India Company paid £939,293 for the charge of the 4 regiments of Cavalry and 24 regiments of Infantry

employed in the East, as well as for their depôts at Maidstone and Chatham. At present, also, the Australian Colonies, in return for their Constitution, contribute from £18,000 to £20,000 towards the expenses of the Land Forces.

Deducting the money paid by the East India Company, we have the following scale:—

For 5,872 Officers - - -	806	Cavalry	£192,205
	5,066	Infantry	845,300
„ 9,215 non-commissioned Officers - - -	1,056	Cavalry	45,084
	8,154	Infantry	259,564
„ 116,945 Rank and File -	10,191	Cavalry	255,633
	106,754	Infantry	1,975,772
132,032			£3,573,559

Amongst these, the 135 Colonels cost nearly £85,000, their pay being regarded in the light of a reward for pay.

The following is an abstract of the Ordnance estimates of the same year:—

For the pay allowances and contingencies of 15,582 officers, non-commissioned officers, and men, composing the several Ordnance military corps, the country voted £749,324. For the Commissariat and Barracks supplies of Her Majesty's forces, great coats for the army, and clothing for Colonial corps, £296,556, and for the Ordnance office, £75,580. Establishments at home £150,505; of which £50,770 were for Ordnance establishments, £73,862 for barracks, £25,873 for clerks of the works; and the sums for the same abroad were respectively £44,355, £70,050, and £23,403. The wages paid to artificers, &c., were £121,646, being £96,204 for home, and £25,442 for abroad. The vote for Ordnance stores included also the sea-service stores, £171,453: an item that,

of course, would greatly increase in the time of war. Then come the sums necessary for building and repairing fortifications, civil buildings, and barracks; these cost at home £175,790, and for building £136,126; £66,672 and £70,440 were the similar sums abroad; the last item was £107,907 for experiments and surveys, or as it is called the scientific branch. The total therefore for the effective Ordnance services was £2,264,807 a year, and the sum for the non-effective services, military and civil, was £172,356, making the Ordnance estimates £2,437,163 in all.

We now come to the Commissariat. The effective services include Officers and Clerks in foreign garrisons and possessions (£44,867); Assistant-Clerks, Storekeepers, and other subordinate persons at the several stations abroad; also allowances and contingencies to them issued in money (£46,981); the pay and contingencies of the Commissariat branch of the Treasury (£5,162); freight of specie, including expenses of shipment, (£5,000); provisions issued to the Army, Ordnance, and Commissariat, to the several stations abroad, after deduction of stoppages in aid, (£109,100); forage, including money allowances in lieu thereof, (£102,578), and fuel and light (£60,796); bringing up the expense of the effective service of the Commissariat to £637,602. The sums for non-effective services in the same branch were sums for half-pay of Commissariat officers (£28,396); pensions to widows of Commissariat officers (£7,030); compassionate allowance to children of Commissariat officers (£1,108); and for compensation and superannuation allowances for the Commissariat (£7,065): for these services £43,599.

THE

MILITARY FORCES AND INSTITUTIONS

OF

GREAT BRITAIN.

THEIR

CONSTITUTION, ADMINISTRATION, & GOVERNMENT, MILITARY AND CIVIL.

PART I.—THE ARMY.

SECTION I.

The Nature of Military Law.

There are few things more often popularly confused together than Martial Law and Law Military, and it is important that the distinction should be clearly understood, for, by confounding the despotism and tyranny of Martial Law with the stringent regulations and mode of trial necessary for the discipline of the army and navy, opportunities have been taken, even by such intelligent writers as Hale and Blackstone, to decry systems arising entirely from necessity, as hostile to the liberty of English subjects.

"Martial Law," says Blackstone, "is built on no settled principles, but is entirely arbitrary in its decisions, and is in truth no law, but something indulged rather than allowed as law; a temporary excrescence bred out of the distemper

of the state, and not any part of the permanent and perpetual laws of the kingdom. The necessity of order and discipline is the only thing which can give it countenance; and therefore it ought not to be permitted in times of peace, when the King's courts are open for all persons to receive justice, according to the law of the land." *

The Martial Law that Blackstone here refers to, does not exist in England at all. Where martial law exists and prevails, in any country, it is of a totally different character from that which is inaccurately called martial law merely because the decision is by a court-martial, but which bears no affinity to that which was formerly attempted to be exercised in this country, contrary to the constitution, and which has been exploded for more than a century and a half. Where martial law prevails, the authority under which it is exercised, claims a jurisdiction over all military persons in all circumstances; even their debts are subject to enquiry by military authority: every species of offence committed by any person who appertains to the army, is tried, not by a civil judicature, but by the judicature of the regiment, or corps to which he belongs. It extends also to a great variety of cases not relating to the discipline of the army, in those states which subsist by military power. Plots against the Sovran, intelligence to the enemy, and the like, are all considered as cases within the cognizance of military authority.

But though it is undoubted that no such martial law is consistent with the constitution and public liberty of this country, yet the Kings of England, in former times, have broken through this rule, and frequently enforced obedience to their arbitrary will by the assistance of military tribunals erected without any legal authority.

* Black. Com. 413.

Thus in the reign of Philip and Mary, a *proclamation* was issued, declaring that whoever was possessed of heretical books, and did not presently burn them without reading them or shewing them to others, should be deemed a *rebel*, and executed immediately, by martial law. In the succeeding reign of *Elizabeth*, the exercise of martial law was no less an object of complaint; for, in cases of insurrection, it was not only exercised on military men but on the people at large, and was extended to those who brought *Papal bulls &c. from Rome:* any person might be punished as a *rebel* or as an aider or abettor of rebellion, whom the provost marshal or lieutenant of a county suspected.*

Lord Bacon seems to have been of opinion that the trials at common law granted to the gallant Earl of Essex and his fellow conspirators, were deemed a favour; and that that case would have borne and required the severity of martial law. But though Elizabeth had this consideration for a discarded favourite, the humble and poor found little mercy from her; she may be said to have given them over in very general terms to the provost marshal (Sir Thomas Wilford), when she invested him with authority by commission, and commanded him, on signification from the justices of the peace of London, or the neighbouring counties—of idle vagabonds, and riotous persons, *worthy to be executed by martial law,* to take them, and according to the justice of martial law, to execute them on the gallows or gibbet near the place where they committed their offences.

One of the principal causes of the discontents in the beginning of the reign of Charles the First, was the granting commissions under the great seal to proceed by martial law; under pretext of which some persons were put to death, who, if guilty of any offence, ought to have been tried by the

* Hume—Hist. England, vol iv. p. 419, vol. v. p. 454.

common law. These commissions were annulled, and declared to be illegal by the *Petition of Right.*

Since that time it has been an established principle of our constitution, that "no man can be forejudged of life or limb, or subjected *in time of peace* to any kind of punishment within this realm, by *martial law*, or in any manner than by the judgment of his peers, according to the known and established laws of the realm." This is annually redeclared by the Mutiny Act; thus repudiating martial law in its general sense. The same statute then goes on to enunciate the real foundations and limitations of the *military law* of the British Empire: it says, "Yet nevertheless it being requisite, for the retaining all the forces in their duty, that an exact discipline be observed, and that *soldiers* who shall mutiny or stir up sedition, or shall desert her Majesty's service, or be guilty of crimes and offences to the prejudice of good order and *military dicipline*, be brought to more exemplary and speedy punishment than the usual forms of the law will allow, be it enacted," &c.

It will be seen by this, that in this country all the delinquencies of our soldiers are not tryable, as in most countries in Europe, by military law, but only such as relate to mutiny, sedition, desertion, breaches of good order* and military discipline; where they are offences against the civil peace, they are tried by the common law courts. It is therefore totally inaccurate to regard martial law as having any place whatever within the realms of the British Crown. The army being established by the authority of the legislature, it is an indispensable requisite of that establishment that there should be order and discipline kept up in it, and that the persons who compose the army, for all offences in their military capacity, should be subject to trial by their officers.

* A milder term than "breaches of the Queen's peace."

That has induced the absolute necessity of a mutiny act accompanying the army.

It has happened, indeed that at different periods of the Government, there has been a strong opposition to the establishment of the army; but the army being established and voted, led to the establishment of the Mutiny Act. A remarkable circumstance happened in the reign of George I., when there was a division of parties, on the vote of the army; the vote passed, and the army was established; but from some political incidents which had happened, the party who opposed the establishment of the army would have thrown out the mutiny bill. Sir Robert Walpole was at the head of that opposition, and then some of their most sanguine friends proposed it to them; they said "as there was an army established, even if the army was to be disbanded, there must be a mutiny act for the safety of the country. It is one object of that act to provide for the army; but there is a much greater cause for the existence of a mutiny act, and that is the preservation and safety of the kingdom: for there is nothing so dangerous to the civil establishment of a state, as a licentious and undisciplined army; and every country that has a standing army in it, is guarded and protected by a mutiny act. An undisciplined soldiery are apt to be too many for the civil power; but under the command of officers, those officers are answerable to the civil power, that they be kept in good order and discipline." All history and all experience of the present moment, give the strongest testimony to this reasoning. The object of the Mutiny Act, therefore, is to create a court invested with authority to try those who are a part of the army, in all their different descriptions of officers and soldiers; and the object of the trial is limited to breaches of military duty. Even by that extensive power granted by the legislature to

Her Majesty to make articles of war, those articles are to be for the better government of the forces, and can extend no further than they are thought necessary to the regularity and due discipline of the army. Breaches of military duty are in many instances strictly defined; they are so in all cases where capital punishment is to be inflicted; in other instances where the degree of offence may vary, it may be necessary to give a discretion with regard to the punishment; and in some cases, it is impossible more strictly to mark the crime than to call it a neglect of discipline.

Building on these foundations, the military law has been made as certain, determinate, and immutable in its principles, as the principles of the common and statutary law which regulate the civil classes of society. The Mutiny Act and Articles of War, which mainly contain these principles, are the work of parliament. The observance of the rules of military law is enforced either by plain, specific, and fixed penalties, appropriated to each offence, where the crime is of a positive nature admitting of no gradations; or the offence is left, in certain cases where it admits of degrees of criminality, to the decision of a military jury—that is, a court martial.

"The modern British soldier," says Lord Wodehouselee, "enjoying, in common with his fellow subjects, every benefit of the law of his country, is bound by the military code solely to the observance of the peculiar duties of his profession; a code which is simple in itself, reasonable in its enactments, easy in all its obligations, level to the meanest understanding, and more effectually promulgated and better known, than any of the ordinary statutes of the realm. He complains not himself of the hardships of his lot; he honours his own vocation, and justly accounts it deserving of the honour and respect of others."

Section II.

Rise and Progress of the Military System in England.

Military Law has been from the earliest times part of the constitution of this country, and exhibits the same improvement, though the same irregularity in progress, as other portions of the English system.

The earliest military power arose from the feudal system, military service being the value paid for lands held under that tenure; the greater vassals holding immediately of the crown under that obligation, and the inferior vassals from the others, on the express condition of appearing in arms under their lord's standard, whenever he should require their services. This military service was enforced by the right of confiscation or of resuming the lands granted under the condition, although the most usual punishment of the vassal's neglect of service was a pecuniary fine.

Every possessor of a knight's fee, of which there were above sixty thousand in the kingdom, was obliged to furnish a soldier to attend the King in his wars, during forty days in every year. Thus the King had at his absolute command, and free from all expense, an army of more than sixty thousand men. Gradually, however, personal service became commuted for a payment in money; though in reality the military part of the feudal system was understood to be strictly constitutional, until its final abolition at the Restoration.

From the uncertainty of the service, and its short period in each year,* the military duties of the King's vassals were

* Forty days.

found inadequate for the regular and permanent defence of the country. An *assize of arms* was therefore established by parliament, which bound every subject, according to the rank and measure of his fortune, to provide a proportional quantity of arms for the maintenance of the King's peace. To enforce these obligations, it was customary for the Sovran to issue *commissions of array*, directed to some of the principal men in each county, requiring them at stated times to muster, arm, and exercise the inhabitants of the district. The arms provided were a coat of mail, a helmet, a shield, and a lance, furnished by every person having a knight's fee, one suit for every fee; the same arms for every freeman having goods or rents to the amount of sixteen marks; those who had ten marks provided a coat of mail, an iron cap, and a lance; the two last of which, with a *wambois* (that is a coat quilted or studded with some material to resist the stroke of a weapon) were assigned for the arms of burgesses, and all the freemen of boroughs. These arms could not be sold or pawned, or in any way taken as forfeiture, gift, or security. When the possessor died, they descended to his heir; and if the heir was a minor, his guardian had custody of his arms until he was of age, and until that period found a man to use them in the King's service. The itinerant justices were charged with the care of the execution of this ordinance, and had power both to examine all persons upon oath as to the value of their estate, and to oblige them to swear that they would be faithful to the king, and keep these arms for his service and the defence of the kingdom. No man was to keep more arms than he was to carry to this assize; nor were any to be sold or carried out of the realm. This last prohibition, likewise, extended to ships and timber.

At the distance of a century, a new assize of arms was enacted by the Statute of Winchester (13th Edw. I. 1285).

Under this act, the *view* or inspection of armour was made twice every year, and two constables were chosen in every hundred, by franchise, to make the view; and it was further enacted, that "the constables shall present before the justices assigned, such defaults as they do see in the country, about armour; and the justices assigned shall present at every parliament, unto the King, such as they shall find, and the King shall provide remedy therein."

An inspection by constables, though sufficient in time of peace, was soon found inadequate when the country was either actually engaged in war, or in the immediate apprehension of danger. The King then issued commissions to experienced officers, to draw out and array the fittest men for service in each county; and to march them to the sea-coasts, or to the quarters of the country judged to be most in danger.

Commissions of array became less customary as foreign wars became less frequent; and in the reigns of Henry VIII. and Elizabeth, lords-lieutenants and deputies, in the several counties, were established as standing officers, for assembling and mustering the military force, in case of danger or alarm from an enemy. The statutes of armour, as the laws establishing the assize of arms and commissions of array were called, were repealed in the time of James I. His successor, Charles I., however, attempted to revive them, in order to oppose the Parliament, in naming their own commissioners to levy and muster troops throughout the kingdom.

The command and regulation of the military power of the kingdom is undoubtedly the prerogative of the crown; and in olden times it was held "that no man should bind himself by any written obligation to come armed to the King, for that every subject is at his commandment." It does not, however, appear that the Sovrans of England, in

the exercise of that prerogative, were merely discretionary or arbitrary in the trial and punishment of persons composing the military power; or that they ever personally interfered. For the trial of military crimes, the King's Court of Chivalry, or the Court of the High Constable and Marshal of England, had jurisdiction, till the later period of our annals.

In England the offices of the High Constable and Marshal were not only *ministerial* but also *judicial*; possessing by delegation from the Sovran, the right of deciding in all matters of war, both within and without the kingdom. This power, probably from the looseness of the terms in which it was conferred, gradually extended to a formidable usurpation on the department of the common law; and to such extent did the grievance arrive, that at last, in the reign of Richard II., it was found necessary to correct it by a statute. By this act the *judicial* powers of the Constable were declared, "to pertain to have cognizance of contracts touching deeds of arms, and of war out of the realm, and also of things that touch war within the realm; which cannot be determined or discussed by the common law, with other usages and customs, to the same matters pertaining which other constables heretofore have duly and reasonably used in their time."

Even after this statute the powers were still enormous. A commission for the office of High Constable of England, granted more than a century afterwards to the Earl of Rivers, in the seventh year of Edward the Fourth, shews its very extensive powers. By this commission an office of the highest criminal jurisdiction in a great variety of offences, of which the nature is no otherwise defined than by use and custom, was conferred on a single individual for life, and he even had the power of exercising it by deputies. His

jurisdiction was declared to be free from, and unfettered by all the usual forms of judicial procedure in the trial of crimes.

The appearance of a trial was not even necessary. The judge was only to satisfy *himself* of the truth of an accusation against any person, and might instantly on the spot decide the case, and award *any* punishment he thought proper; in which no doubt power over life and death was included. He was moreover permitted to make use of the *king's name* to carry his sentences into execution; and no appeal to the king was competent against his decrees.

Such extensive powers may create surprise, but it must be remembered that this commission was granted in the very height of the civil wars of the Roses. . In short, he had sole cognizance of military offences, and the enforcement of martial law throughout the kingdom was exclusively committed to his charge.

The powers of the Constable as a field officer were equally ample and dignified. The Constable was subordinate only to the King in the command of the army; and even when the King was actually in the field, the efficient command of the troops seems to have been in this officer; and all general orders were issued jointly in the names of the Sovran and of the Constable.

Immediately subordinate to the Lord High Constable was the Marshal, who, while the Constable was present, exercised no authority, unless by his command; but in his absence, fulfilled all his functions. Both the military and the judicial powers of the Constable appear to have been delegated to the Marshal; and the statute of Richard the Second applies equally to both these officers.

Sir Edward Coke says of these officers, " If a subject of the King be killed by another of his subjects in any foreign country, the wife, or the heir of the dead, may have an

appeal for this murder or homicide before the Constable and Marshal, whose sentence is by testimony of witnesses, or *combat.*"

This extraordinary office expired in 1521; the fact being that, notwithstanding the extraordinary commission granted to Earl Rivers, the office had, soon after the conquest, become heritable; for by the tenure of the manors of Harlefield, Newman, and Whitenhurst, in Gloucestershire, it was held by grand serjeantry in the family of the Bohuns, Earls of Hereford and Essex, and afterwards in the line of Stafford, as heirs general to that race: it was descendable even to females. At length, in 1521, the office became forfeited to the King, in the person of Edward Stafford, Duke of Buckingham, who in that year was attainted of high treason. The last commission of High Constable was issued by Charles the First in 1631, upon an appeal of treason brought by Donald Lord Rae, a Scottish baron, against David Ramsay, esquire, for certain treasonable words and purposes of hostility against the king and covenant; which, as no witnesses were present at the conversation when they were spoken, Ramsay positively denied, and offered to clear himself to the Court of Chivalry, either by combat, or as the court should appoint.

The Earl of Lindsay was appointed Lord High Constable, that he, together with the Earl of Arundel, Marshal of England, might "hear, decide, and bring to final sentence, this cause, and do therein according to the law and custom of *arms*, and the usage of the *Military Court* of England." The Court of Chivalry, consisting of ten other officers of state and chief nobility, commissioned by the King to sit with the High Constable and Earl Marshal, pronounced that the crimes charged amounted to high treason; the Earl Marshal then set forth that the court was competent

to decide by the proof of witnesses, but as there were no witnesses, the trial must be by public duel. The parties then threw down their gloves, and the High Constable, putting the appeal into one glove and the answer into the other, folded them together, and adjudged, in the name of the Blessed Trinity, that the said Lord Rae and David Ramsay should decide their difference by duel, on the 12th day of April, 1631, between sun and sun, in Tothill Fields, Westminster, in the presence of the King. The King, however, subsequently withdrew his commission, on further reflection judging this mode of trial to be a relic of barbarism, and the duel was never fought.

The offices of the Lord High Constable, in the trial of great crimes, have of late years been performed by the Lord High Steward, in the case of great state offences; and the Office and Court of Chivalry may be now be said to be obsolete: neither has ever been formally abolished —although the trial by battle was put an end to by Act of Parliament in 1818.

From the time of Henry VI. many acts have been passed that, either by transferring the powers of the Court of Chivalry to the civil magistrate, or, by restricting its power, gradually drove it into disuse. In the eighteenth year of Henry VI. desertion from the king's ranks was made felony. It seems that in the time of Henry VII., and previously, it was the custom for the captains retained to serve the king, either on sea or land, to contract with the king to have with him in his company a given number of men, and to pay them their wages, deducting, however, 6s. 8d. for the clothing of each yeoman, and 13s. 4d. for that of each gentleman of his company. A statute was passed for the punishment of captains making any default in their contract.

About the time of Henry VIII., or his children, Lords Lieutenants began to be introduced, as standing representatives of the Crown, to keep the counties in military order; for we find them mentioned as known officers in the Statute 4 and 5 Ph. and M. c. 3, though they had not then been long in use; and Camden speaks of them in the time of Queen Elizabeth, as extraordinary magistrates, constituted only in times of difficulty and danger. These commissions of lieutenancy contained in substance the same powers as the old commissions of array, and caused the latter to fall into disuse.

In the early part of the reign of Edward VI.,* an act, closely resembling in intention the Mutiny Acts, was passed to regulate the army, and impose penalties on breaches of contract with the king—such as selling or pledging arms, desertion, and giving and taking illegal discharges, but not touching on internal discipline; and by a later statute† these offences were to be tried by justices of the peace before a jury: unless the offence was committed in the time of actual service, in which case the Lord Lieutenant, the Lord Warden, or any other chieftain, during the time of their commission, had power to determine such offences according to their discretion.

In this state things continued until the repeal of the Statutes of Armour, in the reign of King James I.; after which, when King Charles I. had, during his northern expeditions, issued commissions of lieutenancy, and exerted some military powers, which having long been exercised were thought to belong to the Crown, it became a question in the Long Parliament, how far the power of the militia did inherently reside in the king, being now unsup-

* 2 and 3 Edw. VI. c. 2.

† 4 and 5 Phil. and Mary, c. 3.

ported by any statute, and founded only on immemorial usage.

The King had, in order to raise funds, resorted to the expedient often employed by his predecessors, of issuing writs for borrowing money from his subjects. But what constituted both the grievance and the illegality attending this measure, was the billeting of soldiers on such as refused to lend. This was an exertion of the military power of the Crown, which, however it might be countenanced by former practice, was clearly unconstitutional. The army, ill paid and undisciplined, and thus employed as a scourge on the people, committed numberless outrages, which the king had no means of repressing but by a more vigorous exercise of martial law.

Commissions were given to the lords and their deputies to proceed against all soldiers, mariners, and other disorderly persons joining with them, who should be guilty of felonies, robberies, murders, or other misdemeanors, according to certain instructions given by His Majesty, and to execute all such persons, as in time of war—a remedy which the strict adherents of constitutional principle deemed worse than that disease which called it forth.

It was against this abuse of the prerogative of the crown, that the sixth section of the Petition of Right was directed. The Parliament obtained not only the withdrawal of the billets but the revocation of the obnoxious commissions. There being nothing at this time in the form of a mutiny act, the effect of this revocation was to abolish altogether the exercise of *military law*, even in cases of extreme and most urgent danger; consequently, when the King, in the interval between his fourth and fifth parliaments, marched against the Scots with an army of 21,000 men, the generals found their authority utterly insufficient for the maintenance of

order; and recourse was had to the opinion of eminent lawyers for advice how to act in this critical emergency. In want of a sure principle on which to found their opinion, the lawyers proposed an intermediate course, which was founded on no principle at all; they declared that martial law could only be exercised when the army was actually in sight of an enemy; and, the generals having executed one of the most daring of the mutineers, they advised an application to the crown for a pardon of this illegal stretch of authority. This opinion was so repugnant to the sentiments of the officers of the army, that Lord Conway boldly declared that if the King would give him a commission to execute martial law, he would stand to the consequence; and if any lawyer should deny his authority, he would hang him up as an answer to his argument.

It is not necessary for us to enter into any detail of the the well-known struggle that took place between Charles and his Parliament, in which the question of the militia, in other words the power of the sword, formed one of the principal points in dispute.

It was maintained by the royalist party, that the preservation of the peace of the country, and its protection from foreign invaders, were the unalienable privileges of the crown, and involved the right to command all armies and to demand on all occasions the military services of the lieges. The other party contended that such privileges existed in no individual without the consent of both houses of parliament; whilst it was urged, first in the form of an ordinance, and then in that of a bill, that the King should consent to the militia being placed in the hands of commissioners named by parliament.

Although, as we have shown above, the King was, in moments of danger, so far guardian of the peace, that he

was entitled to put himself at the head of the persons bound to keep themselves in readiness for such occasions, and the practice had been undoubtedly still more favourable to the prerogative, yet neither an act of the legislature nor any uninterupted train of precedents had given the monarch the unlimited military command which he claimed. The power of the militia was properly neither in the King only, nor in the parliament; and if the law had placed it anywhere, it was both in the king and parliament joined together.

At the Restoration, one of the earliest resolutions of the new parliament was one for disbanding the army, and the soldiers were permitted to exercise trades; another statute immediately followed, abolishing the ancient military tenures, or the holding of land by knight's service. Thus, both the last remains of the feudal military power of the crown and the standing army were abolished almost at the same time. A body of troops to the amount of 5000, was, however, still kept on foot for guards and garrisons: this was in fact the first body-guard ever enjoyed by any English King.

This first parliament, of which a great proportion was of the presbyterian party, was not disposed to restore to the Sovran the prerogatives of the Crown to their full extent; but the parliament which succeeded was of a different temper, and began their session by a solemn recognition of the ancient prerogative.

It declared the "sole and supreme power, government, command, and disposition of the militia, and of all forces by sea and land, and of all forts and places of strength, is and by the laws of England ever was the undoubted right of His Majesty and his royal predecessors, kings and queens of England; and both or either of the houses of parliament cannot, nor ought to pretend to the same."*

* 13 and 14 Car. II. c. 3.

The same statute imposed a military oath of allegiance on all lords lieutenants, deputy lieutenants, officers and soldiers; and a proposition to impose the same oath on the nation was only lost by a majority of three voices.

In this form the military power still remains, in the theory of law; but in reality it is under regulation of parliament, by means of the power of supply lodged in that body. It was this power of the purse that controlled, throughout the reign of Charles and his brother James, the weapon of despotic power intended to have been given in the above statute.

The period of the Revolution is the era when the Military Law assumed a regular and permanent form. By the *Declaration of Rights*, it was settled in positive terms, "that the raising and keeping of a standing army in time of peace, without consent of Parliament, is contrary to law." This, with the declaration "that the subjects, if protestants, may have arms for their defence, suitable to their condition, and as allowed by law," are the only articles in that act regarding the military power of the crown; which must therefore be considered as resting in its essentials on the broad basis on which it was placed by the statute 13 and 14 Car. II. c. 3.

In the first year of William and Mary, several of the British regiments had begun to show strong symptoms of disaffection to the new government, from a jealous resentment of the preference which the king was supposed to shew to his Dutch troops. Among the rest, the Scottish regiment of Dumbarton, formerly commanded by the Duke of Monmouth, being ordered for embarkation to Holland to replace a regiment of Dutch guards which the king wished to retain in England, openly mutinied at Ipswich, seized on the money appointed for their pay, disarmed their officers, and declared their adherence to the abdicated prince.

The king marched three regiments of Dutch dragoons against them, and then communicated the event to Parliament.

Parliament, anxious for the discipline of the army, and at the same time jealous of the military power of the Crown, interposed their authority, and armed the king with a *Mutiny Act*, which should be a warrant of unquestioned legality for the punishment of military crimes.

The first regular Mutiny Act was therefore passed on the 3rd of April, 1689, to endure for six months only. It has, however, from that time, with the exception of a single interval of three years during the reign of King William, been annually renewed by Parliament; and thus military law, executed by the Sovran, but authorised, and in fact framed by the legislature, rests upon a basis of the most undisputed authority.

In Scotland there seems never to have been, except in burghs, a national force for the defence of citizens. The earliest Acts of Parliament, however, enforce the use of the bow, of which the efficiency had been so clearly learned in the English wars; whilst periodical "*wapenshawings*" are directed to be held, in which each individual should be armed, upon a scale vaguely proportioned to his property. In time of war or rebellion, proclamations were issued, charging all sheriffs and magistrates of burghs to direct the attendants of the respective wapenshawings to join the king's hosts; and the criminal records contain many prosecutions for "abiding from" the various "raids," which were generally settled with the Lord Treasurer. During the civil wars of the seventeenth century, the army, which in Scotland had been brought into existence by the enthusiasm of the Covenanters, was supported by levies and assessments apportioned by District Committees of War, appointed by

Parliament, whose duties and powers were modelled on those of the Commissioners of Array in England.

In 1662 (1 Car. II. 27), the Parliament made offer of 20,000 foot and 2000 horse to be at His Majesty's sole disposal, and to be marched to any part of Scotland, England or Ireland.

This body constituted a regular standing army, the organization of which underwent some alterations in the year 1669, 1672, 1693, and 1695. From this last period no legislative improvements were made in the militia of Scotland until 1797, when the system established in England was partially extended to that part of the empire, though not without considerable local disturbance.

In Ireland, the predatory army of *gallow-glasses*, which, even in times of comparative tranquillity, it was found necessary to keep constantly armed for the preservation or enlargement of the Pale, was supported to a small extent by supplies from England; but it chiefly depended on exactions from the Anglo-Irish, made by a dexterous application of the many fines and petty tributes originally exacted by the native chiefs. To these the English added the formidable exactions of *coign and livery*, which, embracing free quarters, and all that was generally taken under sanction of that licence, were the frequent subjects of bitter complaint, though not much heeded by a government which expected that the conquest would at least support itself. In 1715, on the occasion of the rising in Scotland in favour of the first Pretender, the Irish Parliament raised a militia to consist of Protestants. Roman Catholics were subject to double rates, and all serviceable horses belonging to them might be seized and made use of, provided that within ten days the sum of £5 (deducting the expenses of seizure and keeping) was tendered to the owner as full payment. After

several partial alterations, the militia laws were consolidated by the Irish Parliament in 1793 (33 Geo. III. c. 22) and 1795 (35 Geo. III. c. 8), and assimilated to those of England in 1809.

Section III.

*The Civil Administration of the Army.**

In order to understand this subject, which has lately attracted so much attention, it will be necessary to explain the system that existed previous to the change lately made in the Secretariat of War,

Up to the year 1768, there were only two Secretaries of State; but on account of the situation of the country, during the war with America, a third was afterwards added. The appointment continued till 1782, when, by Mr. Burke's bill, the office of third secretary was abolished; and from that time to 1794 the business was conducted by two Secretaries of State, under the names of Secretary for the Foreign, and for the Home Department. In 1794 Mr. Dundas, then Home Secretary, also carried on the business of what was then for the first time called the War Department; but this business so much accumulated that it was thought necessary to separate the two, and on that occasion, the office of Secretary of State for the War Department was created.

* The substance of this section is derived from "Materials for a History of the Public Departments," by F. S. Thomas, Esq., "Report of the Commissioners to enquire into the Civil Administration of the Army," from "Murray's Official Hand Book," and the "Annual Registers."

For about seven years after, all business connected with the Colonies was transacted by the Secretary for the Home Department, but in 1801 it was transferred to the office of Secretary of War.

The military administration of this country, in all its political bearings, is in reality vested in the two Secretaries of State; or, in one word, in the Queen's government.

The Secretary of State for the Home Department has the control and management of all the militia and the yeomanry, as well as the disposal of the troops of the line at home. According to the necessities of the service he orders the army into a disturbed district; he conveys his orders to the general officers, who are immediately under his guidance. He informs them how they are to act in conjunction with the magistracy, not only in case of disturbance but in any cases that might arise. The selection of the commander for districts at home was never made by the Commander-in-Chief without the concurrence of the Secretary of State for the Home Department. A lieutenant-general in Ireland is not appointed without his concurrence.

On a similar principle, the Secretary of State for the War Department and Colonies had the command of the army abroad. He ordered not only what proportion of troops should be sent to each colony, but he approved of the appointment of the general officer who was to command them; in short, he had the control over the army, as an instrument for all purposes of state policy. This office is now divided into two portions, and there is now a Secretary of State for War, who holds exactly the same position as the Secretary for War and Colonies formerly held. He could take very few of the powers of the Home Secretary without an Act of Parliament; the late change was made under the power of the prerogative alone.

Powers and Duties of Secretaries of State.

The orders of the Queen's government, as to the employment of the royal forces, are communicated to the military authorities by the Secretaries of State, *any one* of whom was competent to signify the Queen's commands; though practically it is usually done by the Secretary of State for the Home Department, or for War.

These ministers, in their respective departments, communicate with the Commander-in-Chief and Master-General of the Ordnance upon all points connected with the internal defence of the country, and the protection of the foreign possessions of the crown; and it is by one of them that all the higher military appointments, to which the sanction of the government is required, are authorized. The Secretary of State for the Colonies, in addition to the duties of this description which, in that capacity, naturally fall to him, had further, as Secretary for the War Department, an authority in all matters relating generally to the army, and which now belongs to the Secretary of State for War. It was his province to submit to the King the advice of his ministers as to the whole amount of forces to be kept up, and he made known to the Commander-in-chief the establishment thus decided upon. In time of war, he corresponded with officers on foreign service, and conveyed to them the orders of the government; and he in some instances originated warrants, prepared by the Secretary at War, for regulating the terms upon which soldiers were enlisted, and the pensions which they were to receive.

Besides these substantial and important duties relating to the army, the Secretaries of State have committed to them others of a merely formal character. All military commissions are technically issued under their authority, in the following manner; the Commander-in-Chief, who takes the Queen's pleasure upon appointments and promotions in the army, forwards a memorandum of those which are approved

to the War Office; the Secretary at War then caused two lists to be made out, of the new commissions required, the one containing those for regiments serving in India and Ceylon, and for the colonial corps; the other for the remaining regiments; the former list was transmitted to the Colonial* and the latter to the Home Department; the commissions were prepared in these offices, and then forwarded by the Secretary of State to the Queen for signature, and completed by being countersigned on their return. In the same manner, the authority for the issue of arms to the troops is given by the Secretary of State. The Secretary at War, upon being informed by the Commander-in-Chief that any given supply of arms was required by a regiment, writes to the Secretary of State for the Home Department, requesting that he would signify the Queen's pleasure to the Master-General and Board of Ordnance for the issue of arms; and the letter written in consequence, by the Secretary of State, was the proper authority to this department for furnishing the required supply.

Commander-in-Chief.

The Commander-in-Chief is under the two Secretaries of State, and is an executive officer, who receives from the Queen direct, or from them, Her Majesty's orders for the employment of the army. As regards the organization, the promotion, the discipline, the field movements, and the welfare of the army, he receives his orders direct from the monarch. He is not a ministerial but an executive officer, responsible to the Queen and the government for the military organization, efficiency, and discipline of the army. When an expedition sails, the Secretary of State for the War Department gives Her Majesty's instructions to the general officer commanding the expedition, stating the

* Now, of course, the first list, if not both, would be sent to the Minister of War.

objects of the Government; and *he* would be responsible to the Government for the result, and not the Commander-in-Chief, who merely gives his instructions to the general in command on points of organization, staff, discipline, &c. &c.

Secretary at War.

The Secretary at War is the officer responsible for the financial administration of the army; he is equally under the two Secretaries of State or the Cabinet, in many points, such as yeomanry and militia arrangements at home, and colonial allowances abroad.

Thus the higher duties of the Secretary at War are now joined to the offices of the other Secretaries of State, according as they affect the home or foreign army service. His duties have at different times been subject to much variation. At present they chiefly consist in preparing and submitting to parliament the army estimates, in checking the details of military expenditure, and in attending to the due execution of military law.

The preparation of the estimates is thus managed; the general amount of the force to be kept up having been determined by the cabinet, and approved by the Queen, on the advice of the Secretary of State, as above described, the detailed establishment of the year (as it it termed) is then made out under the orders of the Commander-in-Chief; and by that officer, (the Queen's written approval having been obtained,) it is transmitted to the war office, where it forms the ground work for the preparation of the annual estimates, in framing which the Secretary at War is bound strictly to adhere to the materials thus supplied to him, and has merely to calculate the officers and men whom it is proposed to employ. The expenditure of the sums granted by Parliament for the ordinaries of the army, takes place by warrants signed by the Secretary at War on the Paymaster-General.

The accounts of the regimental paymasters and of other officers charged with the payment of different branches of the service, are examined and audited in the War Office; and the Secretary at War decides upon all doubtful claims of pay, for all the different allowances to which officers and soldiers are under various circumstances entitled, and for widows' pensions, and pensions for wounds.

It is further the duty of the Secretary of War, in concert with the Commander-in-Chief, and with the consent of the Treasury, in all cases in which any increase of expense is involved, to make from time to time such alterations as may be required in the various regulations, as to the rates of pay, allowances, half-pay, and pensions, to be assigned under various circumstances; the warrants by which all these points are determined being prepared under his direction, and submitted by him to the Queen.

It is likewise the practice for the Secretary at War, in consequence of his being the person called upon in Parliament to answer all questions connected with the administration of the army, to offer suggestions, as may seem to him to be required on various points, either to the Commander-in-Chief or to the Secretary of State.

He also directs the insertion of all military appointments and promotions in the Gazette; and, as has been already mentioned, he is the channel for obtaining the authority of the Secretary of State for the issue of arms by the ordnance, when required by the military authorities. He is also, under the authority of various acts of parliament, charged with the protection of the civil subjects of the realm against oppression and misconduct on the part of the military; and for this purpose he communicates with the magistracy, in respect to complaints against officers and soldiers, over whom the Secretary at War exercises an independent authority in

enforcing the provisions of the law. He prepares and brings into Parliament the annual Mutiny Bill, and frames the Articles of War. He issues routes for the movement of troops, as the necessary authority for their quarters and diet on a march.

The Ordnance Board.

The next department of which the duties have to be described is that of the Ordnance. In this department are united two distinct classes, which are generally dealt with. The Master-general directs personally, and without the assistance of the board, all those matters with reference to the corps of artillery and engineers; which, in the case of the rest of the army, come within the province of the Commander-in-Chief. All military appointments, all questions of discipline, and orders relating to the employment of the force, come under this description; and likewise the general government and direction of the Military Academy at Woolwich.

The other class of duties of this department (which may be termed, to distinguish them from the former, the *civil duties*), is placed under the superintendence of the board and of the individual officers of whom it is composed. This class includes business of very great extent and importance; it comprehends, in the first place, with regard to the Ordnance corps, the greater part of that business, which, as relates to the army, is transacted in the War Office: as, for instance, the examination of the pay lists and accounts, the decision of all claims by officers to pensions for wounds, to compensation for the loss of horses or baggage, to command money, and to allowances for passages, and in lieu of lodgings and servants, &c.

But by far the greater part of the civil duties of the Board of Ordnance have reference to matters concerning not merely their own particular branch of the military, but the whole

army, and even the navy. Arms, ammunition, and military stores of every description, (including guns and carriages for the navy), are supplied by them for both services; besides the clothing of the artillery and engineers. They furnish also part of the militia, of the police force in Ireland, and of some corps belonging to the army, and *the great coats for all;* they are likewise charged with the issue of various descriptions of supplies, as fuel, light, &c., both in Great Britain and abroad; and, with respect to the troops in Great Britain, of provisions and forage.

The construction and repair of fortifications, military works, and barracks, form another large branch of the business of this department; which has also the duty, altogether unconnected with anything of a military character, of furnishing various descriptions of stores for the use of the convict establishments in the colonies.

The whole of this business is distributed amongst the three board officers of the Ordnance — namely, the Surveyor General, the Clerk of the Ordnance, and the Principal Storekeeper. Each of these has his own separate and distinct duties; but, as all acts are done in the name and by the authority of the board, all important questions are brought before it, and every member of it is expected to have a general knowledge of the business transacted in each separate division. The Master-General attends the board only on special and very rare occasions; but all its proceedings, in the form of minutes, are regularly submitted to him for his approval, and are subject to his control. His authority is supreme in all matters both civil and military, and he is considered responsible for the manner in which the department is generally conducted. All reports on matters purely military, or relating to discipline, go to the Master-General; through either its Secretary, the Inspector General of Fortifications, or the Director General of Artillery.

The supply of provisions and forage to the troops abroad is under the immediate management of the Treasury.* The Commissariat.

The Commissariat Officers act abroad under directions from the Treasury board, and it is their duty to provide provisions, forage, fuel, and light, for the troops employed on the respective stations. In many cases the commissariat are enabled to provide these articles at a much cheaper rate than they could be supplied from England; in other cases it is necessary for the benefit of the public, and for the security of the troops, so as to prevent disappointment in the receipt of provisions, that articles should be supplied from this country. In all cases of contracts made abroad, the commissariat report the particulars to the Treasury, sending copies of their contracts, and particular details of their proceedings in forming them, in order that the Treasury board may be satisfied that they have taken proper proceedings in obtaining such supplies.†

The funds necessary for the payment of these supplies are paid out of what is termed the *Military Chest*. The military chest is supplied either by remittance of specie from home, the receipt of revenue collected abroad, or the negociation of Government bills, which the commissary in charge of the military chest is alone entitled to issue. The funds thus provided are appropriated not merely to the payment of such contracts, or to the payment of other articles they may be called upon to furnish for the troops, but are also applied The Military Chest.

* It is the intention of the Government to transfer this department to office of the Secretary of State for War; and before the complete publication of this work, it is expected that the change will be effected.

† The Commissariat Officers also make contracts for materials and stores required by the Ordnance Department to be procured on the spot; and at some of the stations abroad perform the service of agent-victuallers for the naval service.

for the use of the other public departments employed on those stations; for instance, for the pecuniary wants of the ordnance, the navy, and other departments. The commissariat officer is also, as it may be termed, the banker of those several departments, inasmuch as he not only supplies them with money, but receives, on account of their respective departments at home, such monies as they may have occasion to remit to this country. There are also various other sources from which the military chest is occasionally furnished with money. The commissariat officers in charge are required to keep up a constant communication with the Treasury board, upon all points of service in which they are engaged; and the Treasury board exercises a vigilant superintendence over their proceedings. If the Treasury have occasion to make any observations, or to object to any of the proceedings which are so reported, they call for further information, until they are satisfied, or give such instructions or further directions as the circumstances of the case may appear to require. Neither the War Office* nor the Commander-in-Chief exercises any control over the commissariat.

The Secretary at War is however in the habit of bringing under the Treasury's consideration any questions which arise as to the propriety of changes in the rations issued, or in the mode of supply; he being in immediate communication upon these subjects with the military authorities.

The Board of Audit.

The Board of Audit must likewise be mentioned amongst the offices which have duties connected with the military administration. Since the abolition of comptrollers of the army accounts, the commissioners of audit, in addition to their former duty of auditing the accounts of a part of the expen-

* The office of the Secretary *at* War.

diture incurred by the commissaries for the service of the army on every foreign station, have also acted as advisers to the Treasury on military business, and more particularly in all that relates to the commissariat.

Commissioners of Chelsea Hospital.

The Commissioners of Chelsea Hospital are charged with the internal affairs of the hospital, with the admission of in-pensioners, the placing of discharged soldiers on out-pension, and the payment of their pensions. Their proceedings are governed by the patent by which they are appointed, by instructions consequent thereon prepared by the Secretary at War, by various acts of parliament regulating particular points, and by occasional instructions conveyed to them by the Treasury and by the Secretary at War.

SECTION IV.*

Military Command—Staff.

We now have to point out how the means whereby the Commander-in-Chief, as the executive officer of the Army, gives to the different corps, instruction, discipline, and mobility — these are his Adjutant and Quarter-Master-General, and the General Officers of military districts.

The Adjutant-General.

The Adjutant-General of the forces belongs to the personal staff of the Queen herself, and accompanies the

* The substance of this Section is derived from the work of M. Dupin "On the Military Force of Great Britain," from the "Queen's Regulations," and "The Articles of War."

Sovran and Commander-in-Chief in their reviews and tours of military inspection. He is named directly by the Crown, on the recommendation of the Commander-in-Chief. He is the organ of the Commander-in-Chief in matters of detail; whatever regards the state of the troops, in effectives and non-effectives, their formation, discipline, the selection and inspection of military clothing (great coats excepted), the arming of regiments, the recruiting and discharging of soldiers, the appointment and recall of staff officers, the regular official returns, as well as those called for upon particular occasions by the Queen, the Ministry, or Parliament, are the business of the department of the Adjutant-General. Through him passes all correspondence on these subjects, which he submits to the Commander-in-Chief. The orders, particular instructions, and general regulations which emanate from the Commander-in-Chief, in the name of the Queen, or by his own authority, whether relating to the organization, discipline, or instruction of the army, are prepared, forwarded to commanding officers of corps, and published by the Adjutant-General, by command of the Commander-in-Chief, with the approbation of the Sovran.

The troops in Scotland instead of addressing themselves immediately to the Adjutant-General's offices in London, report to a Deputy Adjutant-General in Edinburgh. Ireland, being considered a foreign station, has its own Adjutant-General, who reports to and receives orders from the Adjutant-General of all the forces in London. In each of the military districts of the three kingdoms, the service of the *personnel* of the staff is conducted by an assistant Adjutant-General, nominated by the Commander-in-Chief at the recommendation of the Adjutant-General, with whom the assistants thus named are in correspondence, though not under his immediate orders.

When camps are formed on home service, the Generals appointed to command them have also their Assistant Adjutant-Generals. All military commandants also of a territory or body of troops, in Great Britain or foreign stations, are obliged to transmit to the Adjutant-General of the forces, to be afterwards submitted to the Commander-in-Chief, periodical statements of their commands, in a circumstantial form, after the spring and autumn inspections. The general officers in employment transmit a confidential report on the discipline of the regiment, and the merits of the officers under their orders.

The other principal officers of this department are—1. The Deputy Adjutant-General. 2. The Assistant Adjutant-General. 3. The Deputy-Assistant Adjutant-General.

Deputy Adjutant-General, and Assistant Adjutant-General.

The first assists the Adjutant-General in the discharge of his manifold duties. The duty of an Assistant Adjutant-General, when employed at head quarters, is what his title imports, that of assisting in the details of the office of the Adjutant-General of the army. He is selected exclusively from the experienced field officers of the forces. When employed under a general officer commanding a district, the detail of the duty of a district is confided to him, and he is responsible for the accuracy of the district returns. He is the channel through which the district orders are issued.

Deputy-Assistant Adjutant-General.

Officers holding the appointment of Deputy-Assistant Adjutant-General, are either aids to those of superior staff rank, or perform the same functions as assistants in lesser districts, and commands. They must have the rank of captain in the army, or be selected from subalterns who have been four years in the army and possess a perfect knowledge of their regimental duties. Subaltern officers

holding these appointments take precedence in reference to the choice of quarters, next to Captains, while so employed.

Quarter-Master-General.

The Quarter-Master-General of the British forces is placed in the same rank as the Adjutant-General, and belongs equally to the personal staff of the Queen. Similarly, he accompanies the Sovran and Commander-in-Chief in military inspections, and is named by the Crown on the recommendation of the Commander-in-Chief. His subordinates are of his own choice, confirmed by the Commander-in-Chief.

He is specially charged with the march, embarkation, and debarkation of the forces; the quartering, encampment, billeting, and cantonment; the plans to be laid down, and dispositions to be made for the defence of a territory by field-works, and troops. He receives appeals, and other communications relative to barracks, their occupation and choice of quarters, barrack damages, and allowances of fuel. He issues the routes for the march of troops, and corresponds on all subjects relating to military science, geography, and topography.

In the Quarter-Master-General's department, as in that of the Adjutant-General, there is a deputy, resident in Edinburgh, for the service of North Britain. The Commanders of the forces in Ireland, and in the foreign possessions, have a staff formed upon the same plan. In every British Army there are a Quarter-Master-General, Deputies, and Assistants, fulfilling duties of the utmost importance, and analogous in every respect to that performed in England by the Quarter-Master-General of the forces. The duties of the Deputy Quarter-Master-General, agreeing in character with those of the chief of the department, vary in

weight, extent, and responsibility, according to the locality of his service.

Assistant Quarter-Master-General.

The Assistant Quarter-Master-Generals of districts are charged, under the orders of the general in command, with the duty of quartering, encamping, and the marching of troops within the limits of the district. They report the detail of all such occurrences to the Quarter-Master-General at the Horse Guards, to whom they also transmit a monthly return of the quarters of the troops in the district, according to a prescribed form. It is their duty to control, under the orders of the general in command, the issue and delivery into store of all articles of camp equipage; they are to arrange, under the direction of the general commanding, the accounts of expenses attending the construction and support of field-works, and of signals of alarm, projected by him, and authorized by the Commander-in-Chief. On the coasts they are expected to know the practicable points of landing, the best positions of defence, and the winds and tides that afford access to the coast; and in all districts, a knowledge of the roads, the course of rivers, their periodical inundation, and generally the features of the country.

Attached to the office of the Quarter-Master-General of the forces is a board of topography, with a depôt of maps, plans, and military memoirs, and a library containing the best military works that have been published in various countries.

Barrack-Master-General.

The next officer we shall mention is the Barrack-Master-General. His principle duty is to provide barracks, permament, as well as temporary, for the reception of troops; to superintend their construction or repair; and generally to take care that the troops are properly accommodated, both as to room and otherwise. Subordinate to him, of course, are all local Barrack-Masters, whose duty it is to furnish

bedding and other necessaries for the troops in their respective barracks.

Paymaster-General.

The Paymaster-General is the head of the Army-Pay office, whence the issues for payment of every description of military service are made. The Paymaster-General has no control over the expenditure of the public money. His duty is merely to make payments ministerially, and without discretion, in pursuance of the warrants of the Secretary-at-War. The Pay-office must therefore be looked upon as an office of account only, in so far as it performs the duties of an office of account with regularity and expedition. The materials and documents which compose a considerable part of the account of the Paymaster-General originate with persons over whose conduct he exercises no control. Indeed there is a regular succession in preparing them from the regimental pay-master to the agent, and from the agent to the Secretary-at-War, who finally delivers them at the Pay-office. Different classes of accounts and documents are delivered in at certain periods prescribed by the Pay-office Act.*

Staff Officers.

Officers of all arms, while serving under the orders of the Quarter-Master or Adjutant-General, have the common appellation of Staff-Officers; they cannot be selected from these branches of the service until they have done duty with a regiment for at least four years; and they return to their respective corps when they are no longer required on the staff, or when the regiment to which they belong is ordered on foreign service; and in like manner staff appointments are relinquished when held abroad. No regiment of cavalry, no battalion of infantry, is permitted to furnish more

* 5 & 6 William IV., c. 35.

than two captains, and the same number of subalterns on the staff. Commanding officers are enjoined not to allow their officers to be put on the staff until they have acquired a complete knowledge of their duties as regimental officers.

There are in the British Service five ranks of General Officers:—1. Field-Marshals. 2. Generals. 3. Lieutenant-Generals. 4. Major-Generals. 5. Brigadier-Generals.*

Field Marshals.

With very few exceptions, the rank of Field-Marshal has been limited to Princes who never commanded an army; the highest military office of dignity may therefore be regarded as merely a titular rank, or sinecure. The Generals, on the other hand, are the efficient heads of the army, and it is by the zealous exertions and constant superintendence of the General officers that the system of discipline, which is essential to the reputation and success of Her Majesty's arms, is maintained.

Aides-de-Camp.

General officers have attached to their suite, in proportion to their ranks, a number of Aides-de-camp. The Aid-de-camp is the organ of his General. All orders sent by Aides-de-camp are required to be delivered in the plainest terms, and expected to be obeyed with the same readiness as if delivered personally by the General officers to whom they are attached. Before an officer can be appointed an Aid-de-camp he must have been two years with his regiment. Aides-de-camp (excepting those attending Her Majesty), are not to be effective full officers of regiments.

Military Districts.

We have now to speak of the most important services of

* The rank of Brigadier-General was allowed to fall into disuse after the last war (1815), and up to the opening of the present campaign (1854), that rank did not appear in the Army-List. Several Generals of Brigades have been appointed, however, for the purposes of the present war.

the staff of General officers in the British armies. The territory of the three kingdoms is allotted into districts, which are entrusted, with regard to military affairs, to General officers. During the last war these districts were ten in number for England and the Isles in the Channel, two for Scotland, and seven for Ireland. Since the Peace (1815) the districts of South Britain have been reduced to six.

Generals of Districts.

The General officers of districts are responsible for the discipline and the constant preparation for active service of the forces under their control, within their districts. Officers in these important commands should therefore obtain the most accurate information of all military bodies within the district, the nature and terms of the services, and their fullest numbers, in case of emergency: and also inform themselves of the military resources of their districts, in regard to provisions, labourers, horses, and the means of transporting troops and stores. They should obtain accurate military knowledge and intimate acquaintance of the following particulars: the strong features of the country; military depôts; fortified places, and their available means of defence and increase of power against an invading enemy; the assailable points of the country; that the General and staff officers under their command are well versed in their duties, and are to the fullest extent competent in intelligence and local information. They are to be prepared, *at all times*, to afford the Commander-in-Chief information as to the efficiency of any corps, in discipline, equipment, and preparation for immediate service; and on a corps moving from one district to another, they are to report, as soon after its march as possible, to the Adjutant-general, the state and condition, with respect to arms, ammunition, and general equipment, in which it marched to its new destination.

They must watch, with a view to uniformity, the system pursued by the respective commanding officers, officers of regiments or depôts under their orders, in granting indulgencies to soldiers, in awarding minor punishments, and especially in the prevention of drunkenness. Discipline cannot be generally or effectually maintained where different systems are practised in the same garrison or district.

In referring subjects for the consideration of the Commander-in-Chief, they are to submit, at the same time, their own opinions; which, from local and other circumstances, will render material assistance to the authorities at headquarters. They are expected to give their personal and unremitting attention to the interior economy and discipline of the corps under their superintendence and command, and at all times to be prepared to report on all subjects particularly noticed in the instructions respecting the half-yearly confidential reports.

They have also to see that all general orders and rules are carefully and accurately entered in the order books of the regiments of their brigades, and to ascertain, by personal observation, that they are, in every instance, obeyed with the utmost punctuality.

The regularity of regimental hospitals, and the general arrangements respecting the sick and convalescent soldiers, are objects demanding their constant and serious attention. General officers are to cause the troops under their command to be frequently paraded, and exercised at least once a month in heavy marching order. They are not themselves at any time to change the quarters assigned to them, nor *on any account, nor under any circumstances, to quit their commands without special permission.* When on temporary leave of absence from the Commander-in-Chief, they must report to the Adjutant-General the name and rank

of the officer on whom the command devolves. When commanding at home or abroad he grants leave of absence to a staff officer, the General makes a special report to the Adjutant-General of the particular circumstances, the period, and the name of the officer; but the circumstances generally must be urgent, and the periods short.

The General officers commanding districts and brigades are to adopt every precaution for the preservation of game, and to forbid the encroachment of officers or soldiers on manors, or their interference with the manorial rights of individuals, and also to secure the farmers from any inconvenience and damage that might arise from officers or soldiers trespassing over their grounds. They are likewise to keep up an intercourse with the magistrates and other civil authorities, in order to insure confidence and facility of communication when circumstances require the co-operation of the civil and military powers. General directions are also given to General officers when in camp or in the field.

The detail of the duty of every district is confided to the Assistant Adjutant-General, and he is responsible for the accuracy of the district returns. He is the channel through which the district orders are issued; he must therefore be clear, concise, and comprehensive, in his communications.

The commander of a district is further assisted, as we have seen above, by the Assistant Quarter-Master-General of the district.

Major of Brigade.

When several regiments or corps act in one body, or as it is termed in brigade, whether on foreign service or in a district, their brigade duties are to a certain extent under an officer termed the Major of Brigade. The troops of a district form one or more brigades, each with its Major of Brigade; he is the officer attached to the brigade, and not

personally to the officer commanding it. He keeps and regulates the rollster of brigade duties; inspects all guards, out-posts, and picquets, furnished by the brigade, and is responsible for such guards, picquets, &c., being withdrawn when the brigade is to march. His station on a march is in front of the leading regiment of the brigade; he is to encamp in the rear of the centre of the brigade; and either the brigade-major or an orderly adjutant must be constantly in the lines of the camp of the brigade. Majors of Brigade notify their General's quarters at head quarters; no officer under the rank of a General officer, unless he commands the brigade, (the Adjutant-General excepted,) has any right to interfere with the Major of Brigade on general parade, or with any party he is parading, until he delivers it over to the officer who is to command it.

SECTION V.

Regimental Command.

Every regiment of infantry or cavalry has a Colonel, who holds the property of his corps. The greater number of commissions of Colonels are held by Major-Generals, Lieutenant-Generals and even Field-Marshals, who receive the pay of simple Colonels. Formerly the Colonels had great authority over their regiments, and directed their recruiting and discipline at pleasure, but now the office is merely titular, and they seldom, if ever, serve with their regiments. Colonel.

Lieutenant-Colonel.

Each regiment is essentially composed of one battalion, commanded by a Lieutenant-Colonel; and where the battalion is above six or eight companies, also two Majors, all these officers being termed *field officers.* On the war establishment, regiments have a second or even a third battalion, each commanded by a Lieutenant-Colonel and Majors; but these battalions are generally considered supernumerary, and are generally, (but not always,) disbanded on the return of peace. The battalion serves as an independent corps; and the Lieutenant-Colonels are therefore properly the Colonels of regiments, for they have the executive authority, though the emoluments of Colonel do not rest with them.

Duties of Commanding Officers.

The first and principal object of an officer entrusted with the command of a regiment is the maintenance of that system of discipline, regularity, and economy, which is essential to every military body, both in the field and in the barrack. The Commanding officer is invested with authority that renders him responsible both to his Sovran, and his country, for its conduct in all situations, and for the credit of the corps entrusted to his charge. To him each individual is to look, for example, instruction, and encouragement towards the energetic discharge of his duty, and the steady endurance of those difficulties and privations which are inseparable from military services. He is constantly to bear in mind, that the confidence and affection of those who are placed under his charge, depend on his example.

The "Queen's Regulations" go on to say, that it is not likely that abuse of power can occur in a corps which is under the superintendence of an efficient and vigilant commanding officer; but if well grounded complaint be made to him, or he believes it to exist among his subordinates, it is his duty, on enquiry, to check it by the exertion of his

authority; encouraging as little as possible unnecessary and frivolous appeals, tending to destroy the authority of subordinate officers, or to interrupt that chain of responsibility which it is his interest to preserve. The Commanding officer is the friend and protector of the soldier, but not his only friend; at the same time that he himself is responsible for the restraint of conduct at variance with discipline.*

The unanimity and good understanding among his officers, and the harmony of the corps, are peculiar objects of the attention of a Commanding officer; and are to be obtained (with the aid of every officer) by timely prevention of disputes, advice to the young and inexperienced, protection and favour to the deserving, and the immediate reprehension of conduct likely to interrupt the harmony of the corps.†

In differences or disputes between officers of the corps the Commanding officer should be made arbiter between them. It is one of the most important and satisfactory of his duties to spare no pains to arrive at an amicable adjustment of the differences. "The disputants," it is urged, "may safely place their honour in his hands: no one is more interested in the credit of the corps, or more responsible for its unblemished character. Officers ought to consider his decision as final."

The authority of the Commanding officer, though paramount and rendering him responsible for discipline and subordination, is compatible in its strictest form with every courtesy.

In administering reproof, he is urged to avoid wounding personal feelings by harsh language, or a severity of tone uncalled for; as well as exposure before inferiors, or even equals, unless the fault merits a *public* reproof. But though

* The Queen's Regulations, 1848, p. 115.

† The Article of War, No. 13, 1854, applies specially to this section.

private admonition is advised, approbation is to be expressed without reserve, both for the sake of the meritorious individual, and for the encouragement of others.

Prevention of crime, by timely interference, and obtaining the soldiers' confidence and attachment by personal intercourse and example, is a subject of his serious attention. First offences are to be lightly visited; no punishment is to be awarded except with the knowledge and approval of the Commanding officer; he may however, at his option, delegate to officers commanding troops, companies, or detachments, the power of awarding punishments for minor offences, not exceeding three days' drill, with confinement to barracks. These punishments are brought under his notice by insertion in the Company's Defaulters' Book. For all offences requiring more serious notice, the offender is placed in confinement, and the Commanding officer is immediately to investigate the complaint, in the presence of the officer commanding the troop or company, the adjutant, and the prisoner; and having satisfied himself, from the evidence adduced, of the nature and degree of the offence, is to award at once such punishment as he thinks fit, or reserve the case for a court-martial: upon these occassions the Commanding officer is to write his own orders, and not to confide that duty to others.

Commanding officers are empowered to award minor punishments; but to secure uniformity, with slight modification, those specified in the Queen's Regulations are to be adhered to.

To avoid protracted punishments, as tending to cause discontent and distaste to the service, *forty-eight* hours, unless preparatory to a court-martial, is the limit of close confinement.

Solitary confinement, or confinement in the black hole, is

reserved for cases of drunkenness, riot, violence, or insolence to superiors, and in aggravated cases precedes other minor punishments: the whole confinement is not to exceed one month.

Every precaution is taken to check the vice of drunkenness, so prevalent in the British army. Very stringent penalties are enacted in the Articles of War against habitual drunkenness; but much, it is urged, may be effected in aid of them by the manner in which Commanding officers inflict them.

It has been the practice in some corps, (and it is stated to have been successfully applied,) to hold troops, companies, and squads generally responsible for the regular conduct of individuals; taking care that the consequence of this responsibility shall not involve the punishment of those whose conduct shall have been uniformly regular and good. In other corps, a troop, company, or squad police has been introduced, under the responsibility of steady serjeants. These expedients are left to the discretion of Commanding officers.

The instruction and improvement of the officers form an essential part of the duty of a Commanding officer. The code of instruction is established in the regulations for field exercises, of which he ought to be master. He is not to relax until he feels satisfied that the individual has acquired competent knowledge of this part of his duty; and for this object he may direct all officers, including subalterns, occasionally to exercise the regiment in his presence.

Principle of Uniformity.

The general instructions and orders prescribe an *uniform* system of exercise and drill: they admit of no deviation, and in this respect the instructor has *no option.*

The principle of uniformity is considered as of the highest importance in the Army, and applies both to field evolutions

and the interior discipline and economy of corps: in short, to every point which is or has been the subject of general orders.

It is expected that every officer who has been two years with a regiment doing duty, shall be capable of commanding and exercising a troop or company in every situation, and shall be perfectly acquainted with its interior management, economy, and discipline; and that every officer who has been two years a Captain of a troop or company, shall have rendered himself competent in every respect to undertake the duties of a Field officer. Officers who, from incapacity or habitual inattention, are deficient in this part of their duty, are liable in the first instance to suspension from promotion, until proved equal to the performance of it, and free from any cause of censure; and in the next place, namely, in the event of continued incapacity and negligence, they are liable to removal from the service, which must not be encumbered with such officers. The Commanding officer is expected to report specially on this subject.

Majors. The Major holds rank next to the Lieutenant-Colonel, and is generally promoted from the oldest Captain.

As the second in command, and commander of the wing of a regiment, he ought to be prepared at any moment, and under any emergency, to take the place of the Lieutenant-Colonel. He ought, therefore, to become thoroughly acquainted with the duties of command; the interior economy of a corps; and the science of manœuvring on parade or in the field. He is bound also to give the Commanding officer every assistance in his duties, and to set an example of obedience and loyalty; but beyond these, there are no points of detail arranged by the regulations of the service for the Majors of the army. In most cases, the particular functions

devolving on a regimental Major are matters of agreement between him, and the superior officer. He cannot attain the rank he holds until he has been six years in the service.*

Captains.

The Captain is the commander of a troop of cavalry or horse artillery, or of a company of foot artillery or infantry. His duties are many and resposible; he can be promoted after having had two years' effective subaltern's duty, and is then expected to be perfectly acquainted with the interior economy, management, and discipline, of his troop or company. Two years after having obtained the rank of Captain, he ought to be able to act as a Field-officer; inattention to these acquirements exposes him to a report to head quarters, and probable suspension from promotion, or removal from the service.

A Captain is responsible to the Field-officer in charge of the wing of the regiment to which he belongs, for the state of his troop or company in every particular. When quartered in a town, he is to take care so to assort the billets of the squads, as to render their quarters as contiguous as possible; that the subalterns and non-commissioned officers may the more easily perform the duty of superintendence. The pay of the troop or company is entrusted to him, and it is his duty, at the monthly settlement, to explain to the men the various items for or against them. He takes charge of them in every respect; being equally responsible that the men's messes and necessaries are provided on the most economical principles, as he is for their military conduct and appearance. The Captain receives all monies on behalf of his company or troop, and expends such money in conformity with the Queen's Regulations; having regard to the comfort and advantage of the soldier. He is also charged with the

* Stocqueler's British Officer, p. 39.

arms, accoutrements, ammunition, clothing, and other warlike stores belonging to his troop or company. He has also to attend to the cleanliness of his men, their arms, clothing, &c., their barracks or quarters, and that their kettles and cooking places are in clean and good order; their meals wholesome and sufficient, and properly cooked.*

Subalterns. The Subalterns are the Lieutenants, Second-Lieutenants, Cornets, and Ensigns. Cornet is the lowest grade in the cavalry, Second Lieutenant in the Artillery, Guards, Fusiliers, Marines, and Rifle Brigade; and Ensign in the Infantry of the Line and Colonial corps.

On first joining, the Subaltern is placed in the hands of the adjutant and serjeant-major; and he has also to attend to his drills until his person is properly set up, and he can march, and perform the manual and platoon exercises; and if in the cavalry, until he has made some proficiency with his sword. In the cavalry he will then be transferred to the riding master, and (season and other circumstances permitting,) he is expected to attend his lessons and drills five days in the week, until he is reported fit for mounted duty. On that report by the riding master, the Commanding officer of the regiment, or a Field-officer, is requested to witness his horsemanship and sword exercise, and see him tell off a troop for duty; if his performance is sufficiently good, and he marches past and salutes with propriety, he is dismissed as fit for duty; subsequently attending riding drills only when his Commanding officer may deem necessary. The first posting of a Subaltern on joining, is under a superior, from whose example he may profit, and who will endeavour to lead him in the right way, and make him know the importance of attention to the regimental books,

* Queen's Regulations, 135; Art. of War, 118.

returns, and orders. When reported fit for duty he is permanently posted; being subsequently removed from his troop or company as rarely as possible.

Every officer belonging to a regiment, is at all times, and under all circumstances, accountable for the maintenance and observance of good order, and the rules and discipline of the service, according to the powers granted to him in his commission; and it is his first duty to afford, in these respects, the utmost aid and support to the Commanding officer, who is responsible for the preservation of discipline and due subordination. It is by an example of ready obedience and cheerful execution of duty, that that chain of responsibility and authority, so essential to the well-being and efficiency of the service, can alone be established. They are in fact the ground work of discipline, and to enforce this system every individual in the correct execution of his duty should receive the countenance and support of his superiors, and be upheld in the station he fills. Obedience.

The dress and appearance as well as the conduct of the soldier, should always be such as to do honour to the military service. He is enjoined to avoid broils, disturbances, and political discussions. Side arms are permitted only to officers of all grades, except on duty.

The establishment of a Regimental Mess upon a well regulated system is an object of the utmost importance, and requires the unremitting attention of the Commanding officer. Mess.

The Dress of officers of all ranks is minutely detailed in "The Regulations for the Dress of the Army," and cannot in any way be altered or adorned at the caprice of the Commanding officer, without authority.* Dress.

* Vide etiam; Queen's Regulations, p. 132.

Chain of Responsibility.

The regiment is principally dependent for its good order, on what is termed in the regulations the "System of general responsibility," a system that tacitly but necessarily exists in all regulated bodies of men, where order is necessary to their united purpose. In the army it subsists from the highest to the lowest station.

With this view, where practicable, the regiment is formed into right and left wings, placed under the immediate control of a Field officer. The wings are of course formed of so many companies, with their proper officers. Each troop or company is again divided into as many squads as the number of subalterns will permit. The Subalterns to whom the squads are entrusted are responsible for the same to the Captain, who in his turn is answerable for his troop or company to the Field officer in charge of the wing.

Non-Commissioned Officer

The Commanding officers of cavalry regiments appoint Troop Serjeant Majors from the most deserving serjeants of their regiments. The Troop Serjeant Majors are in all respects on the same footing as other serjeants in their regiment, but take precedence and bear four *chevrons* on the right arm. The regimental serjeant major has a crown above the *chevrons.*

Colour-Serjeants.

Similarly, in the Infantry, for encouragement, one Colour Serjeant is allowed to each company, who is distinguished by an honourable badge. Colour-Serjeants* attend the colours in the field, but are not withdrawn on that account from their regular duties. This honourable distinction is bestowed only on men of approved valour and fidelity, who by good conduct have rendered themselves worthy of this mark of approbation.

* Their pay is Two Shillings and Fourpence per day.

Private soldiers of good conduct and education may be called upon to serve in the orderly room as Clerks, and are allowed the difference between the pay of private and serjeant. They serve a probation of three years, and then rank and reckon service as serjeants; after ten years good service in that situation they obtain an addition of six pence a day to their pay. Orderly Clerks.

Every regiment is attended by a Serjeant Armourer, whose duty is the repair of the arms of the corps. He is enlisted as soldier on his qualification as an armourer being attested from the Tower, and after probationary instruction for two months at the manufactory of small arms at Enfield, he joins his regiment and takes rank with the serjeants. He has with him a portable forge and chest of tools, when in the field. Serjeant-Armourer.

When the full establishment of non-commissioned officers is not kept up, their number is *one Serjeant for every twenty effective file and rank, including one corporal;* this proportion may however be increased, under the sanction of the General officer commanding. Recruiting serjeants and those for the depôt, in order to hold a fair object of ambition to soldiers serving with regiments abroad, who by good behaviour and attention to their duty may be deserving of promotion, are in all cases to be furnished from the regiments, and not from the depôt.* Non-commissioned officers may be reduced to the ranks by the sentence of a Regimental or other Court-Martial, by order of the Colonel of the regiment, or by the authority of the Sovran through the Commander-in-Chief. Ordinary Serjeant, &c.

In addition to these officers whose duties are principally Regimental Staff.

* But see Queen's Regulations, 149, for excepted cases.

directed to training and manœuvring the regiment, every regiment has its staff similar to the staff of the army; consisting of a Paymaster, Adjutant, Quarter-Master, Surgeon, and Assistant-Surgeons.

Pay master. The regimental Pay master is appointed by the Colonel of the regiment; he must not be under the rank of Lieutenant, and may be taken either from the full or half-pay list. If the former he must be succeeded in his regiment by an officer on the half-pay list. As a security for his honesty, he is required to give security to the amount of £2000. The security is given to the Secretary at War, and must consist of a policy or bond from the British Guarantee Association, Waterloo Place, London. He is not permitted on any account to engage directly or indirectly in traffic or commerce of any kind, but is to confine himself strictly and entirely to the duties of the station he holds in his corps.* He ranks with a captain in the army, and holds the same rank relative to all naval officers and official civilians.†

Adjutant. The Adjutant is the channel through which all orders pass to the corps; and is also the channel through which all official documents and statements are made to the Commanding officer. From him explanation must be first sought of orders or duties before applying to the Commanding officer. All orders, written or verbal, issued by the Adjutant, are held to be the orders of the Commanding officer, and all reference to orders must be made through the Adjutant.

The Adjutant must also be present at all parades, and it is his duty personally to examine every detachment before it is marched off; to ascertain that it is perfect in all its

* Queen's Regulations, 135.

† Stocqueler, 69—73.

equipments; and that the commander is duly acquainted with his orders.

The Adjutant also has an office at which all regimental rollsters, details for duties, records, and returns, are kept. He has to examine carefully all disbursements of public money made by Pay-masters.

His qualifications are a perfect knowledge of drill and discipline, and of the minute details of the service to which he belongs. Under his hands are the military formation of young officers, drills, and the general instruction of the corps.

Quarter-Master.

The Quartermaster of a regiment is a commissioned officer ranking with subalterns; but the commission cannot be bought. He is generally promoted from the ranks, after having been through the grades of quarter-master-sergeant, or sergeant-major. He is the storekeeper of the regiment for the non-commissioned officers and men. He acts on the written requisitions of the officers of troops or companies. He does not himself give orders for supplies, and does *not deal* with the soldiers.

The stables or public buildings of a regiment are under the Quartermaster. Also the selection of camp grounds; and when a commissary is not present, provisions are under his charge. He is not on the rollster, and keeps proper books for his office.

Surgeons.

The Medical Staff is described in a separate section.

Section VI.

Ordnance—Master-General.

Military Command of the Artillery & Engineers.

Having given an account of the military government of the Cavalry and Infantry, as well as their organization, it is now proper to give the reader similar information respecting the Artillery and Engineer's arms of the service, which in this country are under a separate system.

Master-General.

The Master-General of the Ordnance is its head. The civil duties of his board have been already described, but he has in addition the following military duties.—

The command of the Royal Regiment of Artillery, the Corps of Engineers, and the Company of Gentlemen Cadets.

The superintendence of all matters relating to the discipline, economy, conduct, instruction, and distribution of the Ordnance Corps.

The nomination of officers for commissions in these corps, and the counter signature of their commissions after they have received Her Majesty's signature; and the signing of warrants of appointments for Cadets at the Royal Military Academy.

He has to investigate and decide on all questions regarding the construction of fortifications, the repair of works, the necessity of new military buildings, and the repair of those in existence:—in short, everything connected with engineering expenditure; in which he has to take care, that the means annually furnished are applied in such due proportions that the several defences and military establishments throughout the empire are kept in a serviceable state:—

to attend to that the Ordnance officers are appointed, according to their several capacities; and it is further the duty of the Master-General to watch that the artillery and engineer corps are efficient at every station where they are serving.

He has also to determine all questions that may arise in the general administration of the military and civil services of the Ordnance and of the barrack and store departments.* He acts in concert with the Commander-in-Chief on points connected with the defence of the country, the distribution of artillery, and all matters in which the Ordnance is connected with the army arrangements.

He is supreme at his Board. His office and that of the Commander-in-Chief are not similar. He has power to place an officer on half-pay, or promote him without reference to the board. As regards patronage, he has the same power as the Commander-in-Chief, excepting that the promotion in the Ordnance corps goes by seniority.

The Master-General has not been a civilian for some centuries. The Ordnance was placed upon the present footing in the reign of Charles II., but it has existed from the time of Elizabeth, if not earlier.

Next to the Master-General is the Lieutenant-General of the Ordnance, who, in the absence of the Master-General, is director of the military services.

Engineer Officers.

The officers forming the Engineer corps are the officers of the sappers and miners—besides his duty as a Commanding officer to the corps, and his other duties as a practical engineer in aid of military operations and erecting fortifications, the Engineer officer, (in a district at home,) prepares estimates for the repair of barracks and other engineer

* Report on Civil Administration of Army, 1837: Appendix B.

services, which he sends to the Inspector-General of Fortifications annually. The Inspector-General sends him the answer; and if that contains the authority of the board, then the Engineer officer gets the work done by the contractor, under the contracts entered into by the board, for three years certain, but determinable on three months' notice, after the first year.

Abroad, the Engineer and other officers, at the end of a quarter, certify as to the work done under the estimates they have transmitted, and on the orders of the Master-general and the Commanding engineers, sign an order on the store-keeper for payment at the station. The store-keeper is the accountant.

At home and abroad, the Engineer officer is in no way a public accountant, by making payment to contractors or workmen; and he has only so far the custody of materials and stores, that an annual ledger is rendered, which is made by the clerks of the works, under the engineer's orders. The sappers and miners have no stores except such as belong to their own equipment.

The Master-General superintends the discipline of the corps of artillery and engineers; the Adjutant-General of Artillery keeps the returns of them. One of the five Colonels of Engineers is usually nominated Inspector-General of Fortifications.

The Artillery and Engineers are paid by their own army-agent; but each captain pays his own company, and detachments are paid by the subaltern commanding them. There is a separate pay-master where there is a large force of artillery in the field abroad, and he renders his accounts for the ordinary service, viz.: officers' and men's pay, &c., to the agent, and for the extraordinary services to the Surveyor-general of ordnance.

Under the term Artillery is comprehended the ordnance of the British army, and the officers and men entrusted with its scientific direction and employment. The Royal Artillery never do duty but in corps; the officers however are not exempted from a participation in the general duties of the garrison or camp in which they may be serving, (guards and picquets excepted, which they take with their own corps only); but as there is, in some situations, a very extensive superintendence, and always more or less responsibility attached to the officers of this corps, who are entrusted with detached commands, where the professional duties which demand attention might be interrupted by the performance of garrison duty, the officer commanding the detachment may be exempted from such duties, at the discretion of the commanding General. Artillery.

The officers of this corps rise like the engineer officers, by regular gradation, from the rank of second Lieutenant to that of Colonel.

Each officer of artillery, commanding a troop of horse-artillery, or field-battery, has his own stores under his charge, and he is answerable for them. In colonies and fortresses everything that is applied to their defence is under the charge of the Commanding artillery officer, and he is the sole responsible person. Being accountable for his stores, it is requisite that he should deliver them over in good order. These officers have great responsibilities: for example, the officer of artillery, at Gibraltar, has seven hundred or eight hundred guns under his charge, and he is responsible for them, and all the apparatus attached to them. Instances of great loss, in which officers have been called upon in a pecuniary way to account for stores, seldom occur; but officers are often under great difficulty in being able to clear up their accounts in regard to them.

Director-General of Artillery.

Similar to the Inspector-General of Fortifications amongst the Engineers, is the Director-General of the Artillery. He superintends the *whole materiel* of the Artillery in use, in garrisons, detached batteries, and in the field. He is responsible for its efficient condition, its suitability for the special service, and the supply of necessary ammunition. On these subjects he advises the Board and the Master-General.

He watches, also, the progress of improvement in Artillery. The duties are numerous, and involve a high degree of military responsibility, and require this appointment to be allotted to an officer of high rank and much professional knowledge and experience.

Section VII.

The Army, how Officered and Raised. *

British Officers.

All British subjects can by law hold command in the Army, with the consent of the Crown, whether Dissenters, Roman Catholics, or Jews, provided they are willing to take the necessary oaths.

Foreign Officers and Troops.

Foreigners are not generally competent, (not being British subjects) to hold commissions in either service; but during the War of the French Revolution, the law was somewhat modified; the Crown being authorised to enlist any subjects of Louis XVI., to form them into regiments and battalions, appointing French officers to command them. These troops were to be employed only on the Continent, and the Channel Islands, *and not elsewhere;* and if brought into England,

* See Appendix, for Note on the "Queen's Regulations," regarding Commissions, Exchanges, and Promotions.

were not to be marched more than five miles from the sea coast, nor be landed to a greater number than 5,000.*

The following year, the Crown was permitted, during the continuance of the War, to raise regiments amongst the foreigners then in Great Britain, and to commission foreign officers to command them; with a limit to the number of foreign troops in Great Britain, at one time, to 10,000. The Crown was also authorised to commission foreign officers, and to enlist foreign soldiers generally, to serve in any regiment, battalion, or corps.† The number of foreign troops in Great Britain was, two years later, extended to 16,000.‡ Four days before the Battle of Waterloo these powers were confirmed and prolonged till twelve months after the return of peace. At the same time the commissions of foreign officers were confined to the foreign corps that had been previously enlisted, excepting the 60th Foot; and officers already holding commissions in other regiments.§ These officers may be promoted as high as the rank of General, with all the advantages belonging to the position.‖ So that, with these exceptions, the royal commission cannot be granted to any foreigner not in the service prior to 1815. Minority is no disqualification for a commission.

No native or natural born subject of the British Crown, resident in India, is disabled by reason of his religion, place of birth, descent, or colour, from holding any office.

Officers of the East India Company.

Officers in the armies of the East India Company hold also an additional commission from the Crown, conferring local rank of the same degree in India, as long as the officer holds the corresponding rank in the service of the East India Company. These commissions are signed on behalf of the Crown, by the Commanders-in-Chief of these pre-

* 34 Geo. III. c. 43. † Geo. III. c. 75. ‡ 46 Geo. III. c. 23.
§ 35 Geo. III. c. 85. ‖ 7 Wm. IV. and 1 Vic. c. 29.

sidencies. The Queen's commissions held by captains, lieutenants, cornets, and ensigns, in the East India service, are issued and signed by the Commander-in-chief of the presidency, to which such an officer belongs. But the Queen's commissions granted to officers of the rank of field-officer in the Company's service, are issued under the Queen's sign-manual, in the same way as commissions in the Queen's regulars.

By Custom, the East-India Company does not grant any commission of higher degree than Colonel. General officers in that service receive their promotions directly from the Crown, under the sign manual: but the rank is limited to India. There is no positive law, nor anything but usage, limiting the powers of the Company in this respect.*

Commissions transferrable.

The grant of a Commission is in law an appointment to a public office; now, at common law it is illegal to give money for the appointment to a public office; skill, diligence, and fidelity in the duties of office, are exacted by law from all public functionaries, and, were traffic in offices permitted, posts of the greatest trust might fall into the hands of persons wholly unfit for them.† A peculiarity however, is now legally annexed to Commissions in the army, whereby they are made the subject of purchase, sale, and exchange.

By very ancient statutes "any gift or brokerage, favour, or affection," in the selection of certain officers was prohibited, and by a later one of Edward the Sixth, no public office could be sold under pain of disability to hold or dispose of it.‡ This statute was first held not to extend to military offices in 1702,§ by Lord Keeper Wright, whose decision was affirmed by the House of Lords.

* Prendergast: Laws of the Army, p. 27.

† 1 H. Bl. 323. ‡ 5 & 6 Edw. VI. c. 16.

§ Ivey v. Ash, Precedents in Chancery, p. 199.

But though military commissions were thus saleable, such transactions were not valid without the specific consent of the Crown, in *each* case; and many other public offices stood upon a similar foundation. The price also that was paid upon sales was originally unrestricted, and was regulated solely by the discretion and pleasure of the parties immediately concerned.*

At length, in the reign of George the Third, regulation prices were established by an act of parliament.† By this act the sale and purchase of Commissions in His Majesty's forces, for the regulation prices, by *agents of regiments* authorized by the Commander-in-Chief, or by Colonels or Commandants of regiments or corps, and taking no fee or reward for acting in such transactions, are expressly legalized.

Officers are declared liable to forfeit their commissions and be cashiered, who take, accept, receive, or pay, or agree to pay, any larger sum of money, directly or indirectly, than the regulation price authorized by Her Majesty in relation to the purchase, sale, or exchange, of commissions in Her Majesty's forces, or who shall pay, or cause to be paid, any sum of money to any agent or broker, or other person, for negociating the purchase or sale, or exchange, of any commission.‡

Thus, the sale of military commissions, except for the regulation prices, is prohibited; specific penalties are imposed on officers guilty of breaches of this law; and the same prohibition extends to all pecuniary transactions relative to purchasable commissions, where the heads of the department from which such commissions issue are kept in ignorance of the bargain between the parties concerned.§

Courts of justice take judicial notice of the restrictions as to regulation prices: for example, the Court of Chancery

* Prendergast, p. 46.
† 49 Geo. III. c. 126, sec. 7.
‡ 46 Geo. III. c. 126, sec. 8.
§ Davis *v.* Edgar, 4 Taunt. p. 63.

refused an advance of a sum of money out of a minor's fortune, to provide the purchase money of a commission, when the Court discovered that the amount of the proposed advance exceeded the regulation price.*

Regimental Agents.

Formerly there was no legal restriction as to the persons by whom the agency in the purchase and sale of commissions was undertaken: but, to prevent pernicious trafficking in these important offices, this power was first confined to authorized agents in the reign of George III.† And now every person who is not an authorized army agent, negociating or acting for and in relation to the purchase, sale, or exchange, of any military commission, is liable to forfeit £100 for every offence; and any person, whether an army agent or not, receiving any money or reward in respect of the purchase, sale, or exchange, of military commissions, or negociating or receiving for any purpose whatsoever, any money or consideration where no price is allowed by the Queen's regulations, or any money or consideration exceeding the amount so allowed, is liable to forfeit £100 and treble the value of the consideration, where the commission is not allowed to be sold, or treble the excess of such consideration above the regular price.‡

Commissions in the Marines, Ordnance, and East India Company unsaleable.

No purchase whatsoever is allowed by the Queen's Regulations, or the Act of George III., of commissions in the Marines or the Ordnance corps. Similarly, naval commissions and cadetships in the military service of the East-India Company are utterly unsaleable; all kinds of pecuniary bargains, therefore, with reference to such commissions, are void in law, and the parties concerned are liable to incur the penalties imposed by the statute of George III.§

* Prendergast, p. 49. † C. 15, sec. 100.

‡ Mutiny Act, 1854, sec. 84.

§ Card v. Hope, 2 B. & C. p. 661; Blachford v. Preston, 8 T. R. p. 89.

As might naturally be expected, attempts have from time to time been made to evade these salutary rules; and to prevent evasion, it has been established as a rule of equity, that money improperly received by an officer, either for the direct purchase of a commission, or by way of remuneration for the exercise of patronage or influence in obtaining a commission, can be recovered back. Generally speaking, where two persons enter into an illegal contract, and one of them becomes a loser by his bargain, he cannot call upon the courts to assist him to get back his money on the ground of the illegality of the contract; but this rule, called the principle of *particeps criminis*, does not apply in those cases where public policy requires the interference of courts to check vicious practices. It is considered to be for the public interest that relief should be administered, and that it should be given through the party whose money has been wrongfully received, so that the wrong doer may not retain the spoils of his crime. *

Lord Chancellor Henley says, "I lay down this rule, that if a man sells his interest to procure an office of trust or service under the government, it is a contract of turpitude; it is acting against the constitution, by which the government ought to be served by fit and able persons, recommended by the proper officers of the Crown, for their abilities, and with purity." And he decided that the money advanced on such bargains is liable to be repaid, on a decree of the Court of Chancery, with interest from the time of the advance."

As examples of such cases, I may mention that, in 1792, one McCulloch, a linendraper, entered into a treaty with a

* Whittingham *v.* Burgoine, Anstruther's Reports, p. 900; Roche *v.* O'Brien, 1 Ball and Beatty's Rep. p. 358; Eastbrook *v.* Scott, 3 Vesey p. 456.

person named Morris, who was a livery servant to an officer in the Army, to procure Morris a commission in the Marines for £200. Morris having procured the money, agreed for the commission; and accordingly McCulloch being acquainted with a Mrs. Stot, who was, or pretended to be the wife of a Captain Stot, and was intimately acquainted with Admiral Boscawen, obtained by her means and interest with the Admiral, a commission of second-lieutenant for Morris, who paid £200 to McCulloch for it; out of that sum McCulloch paid Mrs. Stot £50 for her service. Morris having thus obtained his commission, went to Portsmouth, and after having served about six months, was discovered to have been a livery servant; upon which the officers refused to roll with him, and sent a letter upon the subject to the Secretary of the Admiralty, which was laid before the Lords of the Admiralty; when the Secretary, by their direction, wrote a letter in answer, commending them, and ordered Morris to be discharged. It appeared also in evidence that Morris was discharged in consequence of that letter, and for having been a livery servant, and for no other reason; Morris then instituted proceedings in Chancery to recover back the money which he paid for his commission, and McCulloch was decreed to repay it accordingly.*

In another case, in a Fencible regiment of cavalry a Cornet agreed with his Colonel, who alleged he had the right or power of selling commissions, to pay £260 to him to be promoted to the steps of Lieutenant and Captain. The Cornet gave a bill of exchange for the money, but was soon after his promotion deprived of his commission by his Colonel. He therefore sued in Chancery for the recovery of the money, and it was held that the suit was maintainable.†

* Morris *v.* McCulloch, 2 Eden. p. 190.

† Whittingham *v.* Burgoyne, Anstruther's Reports, p. 900.

Not only are purchases of *admission* into those corps in which commissions are not regularly saleable totally excluded by law, but we shall find that similar contracts for *promotion* are also wholly illegal, unless expressly ratified or approved by the heads of the department from which the officer thus gaining promotion receives his new and higher commission. These arrangements usually occurring in corps where the officers succeed one another in order of seniority, as in the East India Company's service and the Dockyards, a valuable inducement is generally held out to a senior officer to retire, in order to make way for a junior.

Lord Loughborough, (C. J.,) thus argues the question in a case where an officer in the Royal Dockyard at Chatham, agreed to give another officer a certain share of the profits of the office, if the latter would allow himself to be superannuated and retire on the usual pension, the agreement having been made without the knowledge of the Navy Board. He says, "Every action on promises must rest on a fair and valuable consideration, which it is for the plaintiff to make out. What is the consideration stated here? The plaintiff represents himself as unfit for future service, and entitled to a pension for the past. This he did at the request of the defendant, on the promise from him of a certain allowance. Now the representation was true or false. If true, there was no ground for any bargain with the defendant; the plaintiff did nothing for the defendant; all he did was for his own ease and advantage. If false, the public is deceived, the pension misapplied, and the service injured. It is not stated that the plaintiff procured the appointment for the defendant (which would clearly be brokage, and bad), but that he *made way* for the appointment. But from thence no valuable consideration can arise. Had the transaction passed with the knowledge of the Admiralty, judging of

the case and applying at their discretion the allowance they are bound to make, possibly it might have stood fair with the public. I say *possibly* only; to be sure the ground of deceit is done away. But this case rests on a private unauthentic agreement between the officers themselves, which cannot admit of any consideration sufficient to maintain an action." *

The principles of this case have been frequently acted on,† and the contract is equally illegal if the money or annuity given by the new placeman is presented, not to the person himself who improperly uses his influence or makes way for the other, but to a third person. ‡

Enlistment. § The rank and file of the army are raised by voluntary enlistment, and their enlistment is carried on by persons specially employed in the recruiting service. All officers, non-commissioned officers, attested soldiers, and out-pensioners of *Chelsea* are entitled to enlist persons into the army, and every person receiving enlistment money from them is deemed an enlisted soldier, and while remaining with the recruiting party is entitled to billet.

The ceremony is this:—every person enlisting any recruit, must first ask the person offering himself whether he does or does not belong to the Militia; and within twelve hours after the receipt of the enlistment money, must cause the name and place of abode of the recruit to be taken down in writing, and if the recruit does not reside in, or in the vicinity of, the town or place where he offers to enlist, he is asked also the place where he intends to sleep. The object

* Parsons *v.* Thompson, 1 H. Bl. p. 322.

† *Vide* Osborne *v.* Williams, 18 Vesey, Com. p. 379; and Hartwell *v.* Hartwell, 4 Vesey, jun. p. 811.

‡ Harrington *v.* Duchatel, 1 Brown, Chancery Cases.

§ See Appendix, for Note relating to Queen's Regulations regarding Enlistments and Recruiting.

of this is, that within forty-eight hours, but not sooner than twenty-four hours (any intervening Sunday not included) after the receipt of the enlistment money, the following notice may be given to him, or left at his usual place of abode, or at the place where he stated it was his intention to sleep.

"*John Noakes*, you enlisted with *William Smith* at *three* o'clock *p.m.*, on the 1*st* day of *June* for the 44*th* Regiment, and if you do not come forward on or before *ten* o'clock *a.m.* on the *5th*, for the purpose of being taken before a magistrate, either to be attested or to release yourself by repaying the enlistment shilling and any pay you have received as a recruit, and by paying 20 shillings as smart money, you will be legally adjudged to be a soldier without attestation, and will be proceeded against as a deserter."

When any person has been enlisted as a soldier in the land service, he must, within ninety-six hours (any intervening Sunday not included), but not sooner than twenty-four, after the enlistment, appear, (together with some person employed in the recruiting service of the party with which he enlisted) before a justice or other magistrate residing in the vicinity of the place where he was enlisted, or before any justice or other magistrate acting for the division, district, or place where the recruit was enlisted. The justice or magistrate must not be an officer in the army.

Examination of Recruits.

If the recruit declares that he has been voluntarily enlisted, the justice puts to him the following questions:—"1. What is your name? 2. In what parish and in or near what town, and in what county were you born? 3. What is your age? 4. What is your trade or calling? 5. Are you an apprentice? 6. Are you married? 7. Are you ruptured or lame; have you ever been subject to fits, or have you any disability or disorder which impedes the free

use of your limbs or unfits you for ordinary labour? 8. Are you willing to be attested to serve in the Regiment of for the term of* years, provided Her Majesty should so long require your services, and also for such further term, not exceeding two years, as shall be directed by the commanding officer on any foreign station? 9. At what place, on what day, at what hour of the day and by whom were you enlisted? 10. For what bounty did you enlist? 11. Have you any objection to make to the manner of your enlistment? 12. Do you belong to the militia? 13. Do you belong to any other regiment, or to the marines, ordnance, or navy, or to the forces of the East India Company? 14. Have you ever served in the army, marines, ordnance, or navy, or in the forces of the East India Company? 15. Have you ever been rejected as unfit for Her Majesty's service or the East India Company on any prior enlistment."

NOTE.—The justice is directed, in putting the 12th question to the recruit, and before he receives his answer, distinctly to apprize the recruit that if he belongs to the militia and denies the fact, he is liable to six months imprisonment.

The justice must then and there, in the presence of the recruit, record or cause to be recorded his answers in writing; and the justice must then forthwith read over, or cause his clerk in his presence to read over to the recruit, the 40th and 46th Articles of the Articles of War against mutiny and desertion, and to administer to him the following oath:—

* This blank to be filled up by the justices with ten years for infantry, and twelve for cavalry or artillery, or other ordnance corps, if the person enlisted is of the age of eighteen years or upwards; but if under that age, then the difference between his age and eighteen is to be added to such ten or twelve years, as the case may be.

"I do make oath, that the above questions have been separately put to me; and that the answers thereto have been read over to me; and that they are the same that I gave, and are true.

"I do also make oath, that I will be faithful and bear true allegiance to Her Majesty, her heirs and successors, and that I will, as in duty bound, honestly and faithfully defend Her Majesty, her heirs and successors, in person, crown, and dignity against all enemies; and will observe and obey all orders of Her Majesty, her heirs and successors, and of the generals and officers set over me. So help me God."

The oath is then signed by the recruit and a witness, and also by the justice, as being sworn before him on such a day and year, and at such an hour. A shilling is paid for the oath, and the justice gives a certificate under his hand.*

If the certified recruit refuses to take the oath, the justice may, at the request of the officer or non-commissioned officer with whom he enlisted, detain and confine the recruit until he takes the oath of fidelity.†

Any recruit appearing as above before a justice is at liberty to declare his dissent to his enlistment, and, upon that declaration, the return of the enlisting money, and also the payment of twenty shillings as smart money, together with the full amount of any pay that may have been paid him subsequent to the period of his having been enlisted, he is forthwith to be discharged and set at liberty in the presence of the justice:—if, however, he refuses or neglects within twenty-four hours after dissenting, to return and pay such money, he is deemed and taken to be enlisted, as if he had given his assent before the justice.

The justice has power to discharge any person who has

* For forms, see Appendix.

† Mutiny Act, 1854, sec. 55, and schedules.

been hastily enlisted, and who applies to him to declare his dissent, within the proper ninety-six hours, and who returns the money he has received and pays his smart money. This may be done when no person belonging to the recruiting party is with the recruit, if it is satisfactorily proved to the justice that the party has left the place, or that the recruit could procure no person belonging to the party to go with him before the justice. The sum so paid is detained by the justice, to be paid to any person belonging to the recruiting party demanding it, deducting one shilling as a fee to the clerk, for reporting to the Secretary at War.

No recruit who has been actually, though erroneously, discharged by a justice, before the expiration of twenty-four hours after enlistment, is liable to be proceeded against as a deserter; and the justice is to give a certificate to every recruit he so discharges, specifying the cause.*

Any recruit receiving the enlisting money from any person employed in the recruiting service (knowing it to be such), and who absconds or refuses to go before a justice, or thereafter absents himself from the recruiting party or person with whom he enlisted, and does not voluntarily return to go before some justice within the proper ninety-six hours, is deemed to be enlisted and a soldier, as fully, to all intents and purposes, as if he had been duly attested. He may be apprehended and punished as a deserter, or for being absent without leave, under any articles of war made for the punishment of mutiny and desertion.

Any recruit so acting cannot be discharged upon dissent, after the expiration of ninety-six hours from his enlistment, unless it be proved to the satisfaction of the justice that the true name and residence of the recruit was disclosed and known to the recruiting party, and that no notice of enlistment was given to the recruit or left at his usual place of abode.

* Mutiny Act, 1854, sec. 56.

Where a recruit has enlisted and absconds, and cannot be apprehended to be brought before a justice, the officer or non-commissioned officer commanding the party produces before the proper attesting justice a certificate of the name and address of the recruit. The justice, on satisfying himself of the facts, transmits a duplicate of the certificate to the Secretary at War, in order that, in the event of the recruit being apprehended and reported as a deserter, the facts of his having received enlisting money and absconded may be ascertained before he is finally adjudged a deserter.

Recruits who have enlisted and been attested, and are discovered to have concealed or not declared any infirmity rendering them incapable of active service, may be transferred to any garrison, veteran or invalid battalion or company, and such a portion of his bounty as may be allowed him, and any recruit proved on oath before two justices, upon his being brought to be attested, to have concealed his having been a discharged soldier, or discharged from any prior enlistment, or concealed any infirmity, or designedly made any false representation, may be adjudged a rogue and vagabond, and punished accordingly; and in Scotland or Ireland be imprisoned with hard labour for three months.

Offences by Recruits.

Any recruit designedly making false representations in the oaths and certificates he is required to take and sign, at the time of his attestation, and thus obtaining any enlisting money or bounty for entering the Queen's or the East-India Company's service, is considered guilty of obtaining money by false pretences; and in Scotland of falsehood, fraud, and wilful imposition.

Penalty on Recruits offending.

Recruits guilty of these offences regarding enlistment may be summarily convicted and punished during the continuance

of their service. The production of the attestation oath, and the certificate given by the attesting justice, in absence of proof to the contrary, are sufficient evidence of the recruit having represented the particulars in the oath sworn by him; and the oath of one or more credible witnesses that the recruit had voluntarily admitted at the time of the enlistment that he belongs to the militia, or the Queen's service, the ordnance, navy, or marines, or the forces of the East India Company, is evidence of the fact, without the production of any roll or document to prove it. The proof of the acknowledgment is certified to the Secretary at War by the justice.

Volunteers in the Militia.

A different course is however taken with men enrolled as Volunteers in the new Militia (called out by 15 & 16 Victoria, c. 50). Such a volunteer denying, at the time of his offering to enlist, and before the attesting justice, that he has been enrolled and engaged to serve as a militia volunteer, on being convicted of his falshood before a justice or a regimental court of inquiry, forfeits all militia bounty which would have become payable to him during the period of his belonging to the Queen's regular forces, if he had not enlisted therein; he forfeits also a penny per day from his pay for eighteen calendar months. If instead of being a volunteer, he had been enrolled as a ballotted man or substitute, he is liable to the *additional* penalty, on conviction before a justice, of being committed to the common goal or house of correction for a period not exceeding six calendar months.

Such recruit does not belong as a soldier to the Queen's or the East India Company's forces sooner than the day on which his engagement to serve in the militia ends; but is at the same time liable to serve in the United Kingdom in the

regiment, battalion, or corps, in which he enlisted, during all the time the militia to which he belongs remains disembodied, or is not out for training or exercise; and if he neglects or refuses to join or serve in his corps he may be treated as a deserter.*

Offences by Recruiting Officers.

Every military officer who *wilfully* acts contrary to the provisions of the Mutiny Act, in any respect, regarding the enlisting and attesting of recruits for the Queen's or East India Company's service, *shall*, upon proof upon oath by two witnesses before a general court-martial, be cashiered and disabled to hold any civil or military office or employment in the Queen's service.†

Re-enlistment.

In order to enable soldiers whose term of service expires on foreign service to re-enlist, and also to enable others abroad to enlist, the crown may, by a warrant signed by the Secretary at War, authorize governors of colonies or presidencies in India to appoint any person (not being a general officer or holding regimental commission) to enlist and attest (out of Great Britain and Ireland) such persons. The persons so appointed have the same powers as justices in the United Kingdom. The expiration of the Mutiny Act does not in any way invalidate these appointments or acts done under them.‡

When a corps is relieved or disbanded at any station beyond seas, the officer commanding in chief there, may authorize any officers to receive as transfers as many of the soldiers belonging to the corps leaving the station as are willing and fit for service for any corps appointed to remain. Soldiers so transferred are deemed to be discharged from

* Mutiny Act, 1854, sec. 57.
† Idem, sec. 58.
‡ Idem, sec. 59.

their former corps, and attested certificates of transfer are delivered to them. If an infantry soldier consents to be transferred to the cavalry or artillery, he becomes liable to serve the period prescribed for the cavalry or artillery, notwithstanding his original engagement to serve in the infantry for a shorter period.*

Negroes and persons of colour, although not born in any part of the Queen's dominions, may be lawfully enlisted, and thereby become entitled to all the privileges of natural born subjects. Negroes purchased on account of the Queen before the abolition of slavery, and serving in the army, and those also seized and condemned as prize under the slave-trade acts, and appointed to serve in the army, are in the same position and entitled to the same advantages as negroes and persons of colour that have voluntarily enlisted.†

Penalties on Apprentices enlisting.

Any apprentice enlisting in the Queen's or East India Company's service, and stating to the attesting magistrate that he is not an apprentice, is deemed guilty of obtaining money under false pretences in England and Ireland; and of falsehood, fraud, and wilful imposition in Scotland; and whether he is convicted and punished or not, when his apprenticeship expires, he is liable to serve as a soldier; and if he does not deliver himself up, when his apprenticeship expires, to some officer authorised to receive recruits, he may be treated as a deserter.‡

The terms on which masters may claim apprentices who enlist as soldiers, are, that the master, within one calendar month after the apprentice has left his service, goes before a magistrate and swears to his apprentice and to his absconding, and produces to the officer from whom he claims

* Mutiny Act, 1854, sec. 59.
† Idem, sec. 60.
‡ Idem, sec. 61.

his apprentice the certificate of the justice of his having taken such an oath. It is also necessary that the apprentice (if in England) shall have been bound for the full term of seven years, and not above the age of fourteen when bound; and if in Ireland or in the British Isles, for the full term of five years at least, not having been above the age of sixteen when enlisted. In Scotland the period is four years; and the contract or indenture must, within three months after the commencement of the apprenticeship, and before the period of enlistment, have been produced before a justice, and had endorsed thereon a certificate or declaration (signed by him) specifying the date when and the person by whom the indenture was produced.*

An apprentice indentured to sea service may be recovered, notwithstanding that he may be bound for a less period than seven, five, or four years.

If the master gives up the indenture of apprenticeship within one month after the enlisting of his apprentice, he is entitled to receive to his own use so much of the bounty to the recruit (after deducting two guineas for necessaries), as shall not have been paid to the recruit before notice given of his being an apprentice.†

In order to provide for the punishment of apprentices enlisting, no master can claim his apprentice from any corps or recruiting party, except under a warrant from some justice residing near, and within whose jurisdiction the apprentice may happen to be, and before whom he shall be carried. The justice is to inquire into the matter on oath, he is to require the production and proof of the indenture, and that notice of the warrant has been given to the commanding officer, and a copy thereof to some officer or

* The contract or indenture must be duly extended, signed, and tested, and binding on both parties, according to Scotch Law, prior to enlistment.

† Mutiny Act, 1854, sec. 62.

non-commissioned officer of the party, and that the person enlisted declared he was not an apprentice. If the officer or non-commissioned officer of the party requires it, the justice is to keep the indenture, and commit the apprentice for trial.*

As it often happens that servants hired for a term of service enlist before the expiration of the term, in order that the servant may not lose all his wages, the justice before whom he is attested may adjudge him a reasonable proportion of his wages for his past service. He may make an order for their payment, and if not paid in four days may issue a warrant for a distress on the goods of the master.

The method of enlistment thus detailed is under the control of the Adjutant-General. Formerly private persons made a trade of enlisting recruits for the army, and great abuses were committed; but in 1802 it was taken into the hands of the Government, and any person advertizing or opening an office for recruits, without authority from the Adjutant-General or the Directors of the East India Company, is liable to a penalty of £20.†

No person can be enlisted to serve Her Majesty or in the East India Company as a soldier for longer than *ten years* in the Infantry, or *twelve* years in the Cavalry, Artillery, or Ordnance Corps; to be reckoned from the day on which the recruit is attested, if he has stated himself to be then of the age of eighteen years; or if not, then from the day on which he completes the age of eighteen years, according to the age stated in his attestation.‡

* Mutiny Act, 1854, sec. 62.

† Mutiny Act.

‡ 10 and 11 Victoria, cap. 37, sec. 1.

In expectation of considerable changes in the method of effecting purchases, promotions, and exchanges, before the completion of this volume, those important subjects were purposely omitted from this section; but they will be found detailed fully in the Appendix.

Section VIII.

Discipline of the Army—Courts-Martial.

Mutiny Act.

The discipline of the army is maintained by means of the annual Mutiny Act. The origin of the first Mutiny Act has been explained before; it was passed in 1689, and with two or three interruptions, has been annually renewed ever since. The provisions of the Act, (originally very confined), have been extended in succeeding Acts, as was from time to time required by the increasing importance of our military establishments and the course of legislative improvement. The Mutiny Act being in force only for a year, the provisions of each Act, unless expressly retained in the succeeding one, become void; though a clause is always inserted by which offences against former Acts are made cognizable by Courts-Martial, if prosecuted within three years from the time of the commission.*

Articles of War.

By the 1st section of this Act the Queen is empowered to make Articles of War for the better government of Her Majesty's forces, which articles shall be judicially taken notice of by all judges and all courts whatsoever. This power, it will be observed, is restricted to the better government of her Majesty's *forces:* the operation of the Articles is

* Mutiny Act, Stat. 17 & 18 Vict. c. 4, 1854.

confined solely to military persons; and even in respect of them, provision is made that no person shall by such Articles of War be subjected to be transported as a felon, or to suffer any punishment extending *to life or limb*, except for crimes that by the Act are expressly made liable to such transportation, or to such punishment as aforesaid; nor to be punished in any manner, or under any regulations, which shall not accord with the provisions of the Act.

These restrictions, which take away from the authority of the Articles to impose original penalties in cases of capital and grave offences, reduce this power to that of enforcing order, by providing for those minor infractions of discipline, which, though too various and minute to come within the observation of the legislature, would, if unchecked, speedily demoralize the army, and render it the terror, instead of the safeguard of society. The Articles of War are generally regarded by military men as containing the substance of the military code, and as such are frequently read to the troops. It has been usual to include in them all those offences which in the Mutiny Act are punished with death, transportation, or other greater severity. Thus, the Queen apparently assumes a power which in reality resides only in the legislature.*

Royal power to erect and constitute Courts-Martial.

Having noticed the authority given by the Mutiny Act to the Queen to make Articles of War for the better government of Her Majesty's forces, we come now to the most important power given by the Act, by which, in order to bring offenders against the said Articles of War to justice, the Queen is empowered "from time to time, in like manner as has been heretofore used, to grant commissions under the Royal Sign Manual for holding warrants in the

* *Vide* Essay on Military Law, Law Magazine, 1835, vol. xiv.

United Kingdom and Ireland, and to grant commissions to the chief governor of Ireland, the Commander-in-Chief, or persons for the time being commanding any body of the Queen's forces, for convening Courts-Martial, and authorizing any officer under their command to convene Courts-Martial as occasion may require, for the trial of offences committed by any of the forces under the command of the last-mentioned officer."*

This power is not varied by the offence having been committed before the officer took his command. This convening officer cannot be below the rank of Field-officer, except in the settlements of the Western Coast of Africa, where he may, though a Captain, convene district or garrison courts.†

Classification of Courts-Martial.

As the offences cognizable by the Military Courts vary considerably in their nature and importance, it is necessary that some courts should be invested with higher powers and more extensive jurisdiction than others. Accordingly, there are four denominations of these courts; namely, *General Courts-Martial, District or Garrison Courts-Martial, Detachment Courts-Martial,* and *Regimental Courts-Martial.* This last court, which is the most limited in its powers, must consist of officers of the same regiment, and is entirely of a domestic character, confining its attention to offences touching the discipline and interior economy of the regiment. Commissioned officers are not amenable to its authority, and it can only award corporal punishment, imprisonment, and stoppage of pay.‡

* By the Queen's Regulations, the Mutiny Act and the Articles of War contain the principles on which Courts-Martial are constituted and conducted.

† Mutiny Act, 1854, sec. 6.

‡ Ibid. sec. 9.

Court-Martial on Line of March.

Power has been given in the late Mutiny Acts to hold Regimental Courts-Martial on the line of march, or in troop-ships, for the punishment on the spot of mutiny or gross insubordination.*

Constitution of a General Court-Martial.

A General Court-Martial convened in *St. Helena*, the settlements on the Western Coasts of *Africa*, *Honduras*, *New Zealand*, *the Australian Colonies*, *Hong Kong*, *and the Settlements on the Coast of China and the Prince of Wales Island*, *Singapore*, *and Malacca*, consists of not less than five commissioned officers; if convened in *Jamaica*, *the Windward and Leeward Islands*, *British Guiana*, *Newfoundland*, *Bermuda*, *the Bahamas*, *the Cape of Good Hope*, or *other* settlements in *Southern Africa*, or in any part of the Queen's Dominions, excepting in the *Ionian Islands* and the parts before mentioned, it consists of not less than seven; and if convened in any other part of the Queen's Dominions, or in the *Ionian Islands*, or in the *Settlements of the East India Company*, it consists of not less than thirteen commissioned officers. It has power to sentence any officer or soldier to death, transportation, or any other punishment which shall accord with the provisions of this Act.†

District or Garrison Court-Martial.

A District or Garrison Court-Martial consists of not less than seven commissioned officers; except in *Bermuda*, the *Bahama*, the *Cape of Good Hope*, or other Settlements in *Southern Africa*, *Saint Helena*, *Jamaica*, *Honduras*, *Newfoundland*, *New Zealand*, the *Australian Colonies*, the *Windward* and *Leeward Islands*, *British Guiana*, *Hong-Kong*, and the Settlements on the Coast of *China*, where it may consist of not less than five commissioned officers. In

* Mutiny Act, 1854, sec. 10.

† Mutiny Act, 1853, sec. 7.

the Settlements of the Western Coast of *Africa* it is to consist of not less than *three* commissioned officers.*

It has the same power as a General Court-Martial to try and sentence any soldier, according to the terms of the Mutiny Act; with the exception that it has no power to try *commissioned officers*, or to pass sentence of death or transportation.

Regimental and Detachment Court-Martial.

A Regimental or Detachment Court-Martial consists of *not less* than *five* officers, unless it is impracticable to assemble that number, and then *three* may be sufficient; this class of Court-Martial has power to sentence any soldier to corporal punishment, or to imprisonment and to forfeiture of pay, according to the provisions of the Mutiny Act.†

Courts-Martial out of the Queen's Dominions.

In addition to these courts, in order to prevent the plunder and ill-treatment of the inhabitants and residents of foreign countries in which British troops may be serving, power is given to any officer commanding any detachment or portion of the Queen's troops, (upon complaint being made to him of any offence committed against the property or person of any inhabitant or resident in any such country, by any person serving in or belonging to the Queen's armies, and under the immediate command of any such officer) to convene a Detachment Court-Martial to try the offence. This court has the same powers as a General Court-Martial, but its sentence requires confirmation by the General commanding the army to which the prisoner's division, brigade, detachment, or party belongs, to render the sentence valid.‡

* Mutiny Act, sec. 8, 1853.
† Ibid. sec. 9.
‡ Ibid. 1854, sec. 11.

Proceedings of Courts-Martial.

As the proceedings of General Courts-Martial are a model to all the rest, I shall only describe the practice of those courts. The principles by which they are governed are, for the most part, applicable to the inferior tribunals; though the forms of the latter are in general more simple.

Courts of Inquiry,

In conformity to the practice of the Civil Courts of Criminal Judicature, in which no party can be arraigned before his peers for any crime until a previous court of inquest has declared that there appears sufficient ground for bringing the accused person to trial, (an inquest, that, by the law of England, is termed the Grand Jury, and whose place is supplied under the law of Scotland by her Majesty's Advocate,) it is understood to be consonant with military law and practice, that in cases of much importance, and where the facts are various and complicated, or there appears ground for suspecting the just foundation of the charges of criminality, or where a crime has been committed, or much blame incurred without any certainty on whom it ought chiefly to attach, a previous Court of Enquiry takes the matter under consideration, and determines on such evidence as can be brought before it, whether there is or is not sufficient cause for bringing particular persons to trial for the offence or crime, before a General Court-Martial.*

How nominated and appointed.

The power of nominating Courts of Inquiry is inherently resident in the Crown, or those officers to whom her Majesty has delegated her authority for calling *General* Courts-Martial. The Queen, though restrained in a certain degree from exercising that full control which a despotic commander would have in a foreign country by the Mutiny Act, has the discretion of issuing such orders as she pleases, for the better discipline and regulation of the army; provided

* Tytler, 340.

they are not contrary to that act, or the common law. All licentiousness in the conduct of officers the Queen may enquire into; the commissions of all officers being held at the pleasure of the Crown. Hence Courts of Inquiry have been held as long ago as any memory goes back; though the earliest instance on record is that which sat in 1767, upon the conduct of General Sir John Mordaunt in the abortive expedition fitted out against Rochfort in the previous year, during the administration of the elder Pitt. The court was composed of three general officers—the Duke of Marlborough, Lord George Sackville, and General John Waldegrave. Sir John complained that this Court of Inquiry prejudiced the subsequent Court-Martial against him. He was however acquitted, much to the dissatisfaction of the public.* These courts are appointed by warrant directed to the Judge Advocate-general under the sign manual, naming the officers to compose the court, and authorising the Judge Advocate to summon such officers as the court may deem expedient for the investigation committed to it; or simply by order from the Sovran, the Commander-in-Chief, a General, or other officer, in command of a body of troops or of a regiment, or even of a detachment.†

The objects and power of Courts of Inquiry.

The opinion of Courts of Inquiry is entirely of the nature of advice or counsel given to her Majesty or her commanders, and it has no binding effect as a sentence against the person accused, who in general is no party to their procedure. Its controlling power over military men, in compelling their attendance before Courts of Inquiry, arises from the order of a superior officer, rather than from any inherent authority that a Court of Inquiry possesses.‡

* Mc Arthur, vol. i, p. 112, 4th ed.

† Simmons, p. 8. ‡ Ibid. p. 8; Tytler, p. 344.

In fact a Court of Inquiry is not in every case called upon, or warranted even, to give an opinion; but it is confined solely to the examination of witnesses on certain points, on the result of which examination the person by whose authority the Court of Inquiry is held, is to form his own opinion. The transactions relating to an armistice and convention, the causes leading to the failure of an expedition, have been submitted to the investigation of a Court of Inquiry. Facts attaching to the conduct of individuals are often submitted to these courts, with a view to ascertain the expediency of a Court-Martial; and in such cases the inquiry ought to be confined to that question.

Not always followed by a Court-Martial.

A Court of Inquiry is not necessarily followed by a Court-Martial. It was the constant practice in the course of the last war to hold these Courts of Inquiry without Court-Martial. After the landing in Portugal, there was an Inquiry and no Court-Martial. In the case of Colonel Home, that officer solicited and was promised a trial by Court-Martial; but the Judge Advocate having twice given an opinion that the matters alleged against Colonel Home were not cognizable by a military tribunal, these matters were ordered to be investigated, and were finally decided on by the assemblage of officers called as a Court of Inquiry.

The proceedings secret and protected.

On the broad principles of public policy and convenience, these matters, secret in their nature, and involving delicate enquiry and the names of persons, stand protected from disclosure under any judicial authority. The minutes therefore of a Court of Inquiry cannot be brought forward as evidence for either party, on a trial in a court of common law. The report of a Court of Inquiry is, in its very nature, a privileged communication. In consequence of a

direction by a competent authority, (the Commander-in-chief for example), for the satisfaction of his own conscience in the exercise of his public duty; and with a view to enable him to ascertain what the conduct of the party suspected might have been, a number of persons may be called before the court, and may give information as witnesses, which they would not wish to have disclosed. But if the minutes of the Court of Inquiry could be produced in a court of law, on an action, they would reveal the names of the witnesses, the evidence given by each, and what has been said and done by each member of the court; the reception of the minutes, therefore, as evidence in a court of law, would tend to disclose that which is not permitted to be disclosed. It follows therefore that any action resting on the minutes of a Court of Inquiry, (such as an action of libel against a member), cannot be maintained.*

Position of the Accused.

Although an officer accused cannot refuse to obey an order directing him to appear before a Court of Inquiry, yet he may object to take any part in the proceedings, and has a right to decline answering any questions, or making any statement which may, in his opinion, be prejudicial to him in the course of any ulterior proceeding in the affair.†

The accused may however avail himself of any opportunity to explain any particular act, or any part of his conduct on which an imputation prejudicial to him may have arisen. His attendance will also enable him to ascertain, to a large extent, the evidence against him, and any contradiction in its repetition at the Court-Martial. Thus he procures a test of the credibility of the witnesses. He is allowed no counsel, and professional persons are not generally permitted at Courts of Inquiry‡.

* Home v. Bentinck, 2 Bro. and Bingh. 160.

† Simmons. ‡ Ibid. 83.

Constitution of Courts of Inquiry.

The members of a Court of Inquiry may be of any number, from two upwards, and of any rank; though generally, of a superior rank to the party accused. They are not sworn, nor do the witnesses examined give their evidence on oath, nor can any person by law be obliged to furnish information to, or give testimony before the court.* It is not necessarily an open court; but this depends on the officer convoking it. The informations, and sometimes the opinions of the court, as well as of each individual member of it, are reduced to writing, and are signed by each member of the court.

No limitation of time in calling Courts of Inquiry.

Courts of Inquiry may be assembled after any lapse of time, and are not limited, as Courts-Martial are, to charges that have a retrospect to a period of more than three years. This of course limits the operation of any Court of Inquiry as a preliminary *intended* to a Court-Martial; though there is no reason, except discretion, why a Court of Inquiry on other subjects should not be held after any length of time.

Held to record Desertion.

Courts of Inquiry are also held to record Desertion. The hundred and forty-sixth article of war directs, that if any soldier shall have been illegally absent from his duty for the space of *two months*, and has not been apprehended, or surrendered, a regimental Court of Inquiry of *three officers* shall assemble, and having received proof of the fact, declare such *absence* and the period thereof; the officer commanding the corps records the absence and the declaration of the court in the regimental books.

We shall now proceed to give a concise account of the proceedings and forms of Courts-Martial, as well as of their powers and authority.

* Tytler, 347.

Courts-Martial to consist of Commissioned Officers.

It will be observed that Courts-Martial are composed of *Commissioned* Officers. All commissioned officers of the army on full pay; all officers on the general staff of the army, in receipt of full pay on the staff, though on the half-pay of their regimental rank; and all officers holding rank in the army by brevet, even if on half-pay of their regimental rank, are eligible as members of Courts-Martial. Staff-officers of pensioners, paymasters, surgeons, assistant-surgeons, quarter-masters, and commissariat-officers, although liable to be called upon to serve on Courts-Martial, are not generally summoned, except in cases of extreme necessity.*

No officer, when it can possibly be avoided, is to be appointed a member, if he belong to a class inferior to that in which the prisoner is serving: dividing the officers of the army into three classes; 1st, general officers of all ranks; 2nd, field officers, and colonels; 3rd, company officers, comprehending captains and subalterns.

As far as possible the members are to be of superior, at least of equal rank; and when a commanding officer is tried, as many members as possible should be officers who have themselves held, or who then hold command.†

The President.

Every Court-Martial is presided over by a President. He is appointed by the authority convening the court.

In no case ought the officer who has authority to confirm the sentence of the Court, or the officer whose duty it has been to investigate the charges on which the prisoner is to be arraigned, to sit as president;‡ nor must the president be under the degree of a field-officer, unless no officer of that

* Officers on their entrance into the army are required to attend the proceedings of Courts-Martial occurring in their corps at least six months from the date of joining, but are not to be nominated members until their commanding officer deems them competent.

† Simmons. ‡ Mutiny Act, sec. 13, 1854.

rank is present; nor, in any case whatever, under the degree of a captain,* except in the cases of Detachment General Courts-Martial out of the Queen's dominions, and Regimental, &c., Courts on the line of march, &c., where a captain cannot be had; provided, that in the case of a Detachment-General-Court-Martial held out of the Queen's dominions, the officer convening the Court may be president.†

Officers of Land and Marine Forces may sit together.

Officers of the Land and Marine Forces, where necessary and expedient, may be associated as members of the same Court-Martial; where the same rules are observed as if the court was composed of officers of the land forces only. The same holds in regard to the officers of the Queen's and Company's Service in India; with this difference, that on the trial of any officer or soldier of the Queen's Service, the provisions of the Mutiny Act must be observed, while on the trial of members of the Company's troops, recourse must be had to the provisions of the East India Company's Mutiny Act.‡

Does not apply to the Militia.

This rule does not apply to officers of the Militia; officers of the regular army being precluded from sitting as members of courts held for the trial of Militia-men, and the officers of the latter being in like manner disqualified from sitting on those for the trial of officers and soldiers of the regular armies.

Commencement of proceedings.

In all trials by Court-Martial, as soon as the president and the other officers are assembled, the names are read over in the hearing of the prisoner, who is thereupon asked if he objects to being tried by the president, or by any of

* Mutiny Act, 1854, sec. 13. † Ibid.

‡ Ibid. sec. 12; 12 & 13 Vict., amending similar Act of 4 Geo. IV.

the officers; if the prisoner then objects to the president, the objection is referred to the decision of the authority by whom the president was appointed; but if he objects to any officer other than the president, the objection is decided by the president and officers appointed to form the court.

Challenges, without assigning a cause, are unknown to Courts-Martial. The statements of the prisoner, and the witnesses he calls to support them, are entered on the minutes of the court. Challenges the Court.

The causes of Challenge may be,—defect in rank in the president; members' want of experience, or extreme youth; the expression of an opinion relative to the subject to be investigated at some time previous to the trial; the having been a member of a court of inquiry on the same subject, which had given an opinion; but if the court had not given an opinion, the member cannot be objected to; the having been a member of a General Court-Martial in which the circumstances about to be investigated had been discussed either principally, collaterally, or incidentally. If the court is a court of appeal, the having been a member of the court appealed from is an objection.

When prejudice or malice are assigned as cause of challenge, Courts-Martial, from motives of delicacy, prefer rather to deviate from the strict line of their duty than to enter into any discussion which might be productive of disagreeable consequences; they refrain therefore from enquiry, and permit the member challenged to withdraw: unless indeed the public service demands that the enquiry should go on.*

The court being finally determined and resolved upon, the president and each member of the court are individually The Court Sworn.

* Kennedy, 20.

sworn, to "truly try according to the evidence," and to administer justice according to the Articles of War and the Mutiny Act, "without partiality, favour, or affection," and if any doubt shall arise then, "according to his conscience, the best of his understanding, and the custom of war in like cases." Each member is further sworn "not to disclose or discover the vote or opinion of any other member, unless required to give evidence thereof by a court of justice or Court Martial in due course of law".*

Precedence in Court. One invariable order of Precedence is observed in these courts; the president sits at the head of the table, the senior member (in rank) at his right hand, the next on his left, and so on in succession.

Time of Sitting. All the proceedings of a Court-Martial, and also the trial, must take place between the hours of eight, A.M. and four P.M. except in cases which require an immediate example; and except in the East Indies, where the proceedings or trial may commence at six o'clock in the morning, ending at four P.M.†

Oaths to Witnesses. Courts-Martial are empowered to administer an oath, or a solemn affirmation, in cases where the law permits, to every person who is examined by them, respecting matters submitted to their decision. The form of the oath is the following:—"The evidence you shall give to the court, shall be the truth, the whole truth, and nothing but the truth, So help you God." All witnesses duly sworn, or summoned to give evidence, or to answer questions put *to them by the court,* are liable to attachment in the principal courts in London, Dublin, or Edinburgh, or in the Queen's do-

* Mutiny Act, schedule 1. † Ibid. 1853, sec. 14.

minions abroad, in the same manner as they would be if they had neglected to attend on a trial in any of those courts. The freedom from arrest, which is allowed to witnesses in the civil courts, is also extended to the persons giving evidence before Courts-Martial.*

Jurisdiction of General Courts-Martial.

The jurisdiction of a General Court-Martial, with respect both to persons and offences, is of a very extensive nature; there being scarcely any crime committed by a military person, not cognizable by it. At the same time no officer or soldier is exempt from being proceeded against in the ordinary course of law, when accused of felony or misdemeanor;† except the misdeameanor of refusing to comply with the order of two justices for the payment of money.

Who are subject to Military Law.

The persons who are subject to military law are, in the terms of the Mutiny Act, (in the first place), "all persons who are or shall be commissioned or in pay as an officer, or who are or shall be listed or in pay as a non-commissioned officer or soldier." Mr. Tytler says, "This would seem to include all half-pay officers, as well as officers holding commission by brevet, though receiving no pay; and it appears that the earlier Mutiny Acts comprehended all these descriptions of persons as under regulations of military law; but the inclusion of officers under half-pay and brevet officers being complained of, at a time when much jealousy was entertained on the score of the liberty of the subject, as being an unnecessary extension of military law, the last part of the clause, which mentioned in express words the inclusion of 'officers on half-pay,' was, in the year 1748, omitted in the Mutiny Act, and has continued to be left out ever since. In

* Mutiny Act, 1853, sec. 15.
† Ibid. sec. 82.

the year 1786, after a long discussion of the question in parliament, it was decided that officers holding commissions by brevet, though receiving no pay, were subject to the regulations of the Mutiny Act; but that officers on half-pay did not fall with in its provisions."* But whatever may be the true construction of the *Mutiny Act*, the *Articles*, at all events, express the intention of the Sovran to confine military law to offences committed during actual military service.†

The provisions of the Mutiny Act also extend over "all persons employed in the recruiting service, receiving pay in respect of that service; to all the officers and soldiers belonging to the forces of the East India Company, while they are in any part of the United Kingdom; to the officers and persons serving and hired to be employed in the Royal Artillery and Field Train, and master-gunners, and gunners, and conductors of stores; to all officers and persons serving in the regiment of Royal Engineers, and the corps of Royal Sappers and Miners, and in the corps of Royal Artillery Surveyors and Draftsmen; to persons in the Ordnance and Commissariat Departments, who are or shall be serving with any part of Her Majesty's forces, at home or abroad, under the command of any officer having commission from Her Majesty, or from his late Majesty, William the Fourth; to all Storekeepers and other civil officers who are employed by or act under the Ordnance at any of Her Majesty's Ordnance establishments in the Islands of *Jersey*, *Guernsey*, *Alderney*, *Sark*, and *Man*, and the Islands thereto belonging, or at Foreign stations.‡

* Tytler, pp. 111–112.

† Simmons, 23, citing Art. War 111.

‡ Mutiny Act, 1853, sec. 2.

The subjection, however, of barrack-masters, storekeepers, &c., to martial law, does not affect the securities or bonds that they give for the due performance of their offices.—*Idem.*

Courts-Martial on Military persons after dismissal from the service.

It was formerly a matter of doubt whether persons subject to martial-law, after being dismissed or discharged from Her Majesty's service, could be brought to trial before a Court-Martial, for a crime committed while he was in commission or in pay. The point came to be solemnly determined in the case of Lord George Sackville, who immediately on his return to England, after the battle of Minden, had been deprived by His Majesty of all military command and commission, but was not brought to trial for his conduct in that engagement till some months afterwards, notwithstanding his own demand of a Court-Martial. The twelve judges unanimously gave it as their opinion, that "they saw no ground to doubt the legality of the jurisdiction of a Court-Martial in those circumstances."*

Whilst under suspension.

A similar question arises, whether an officer who is under a suspension from service for a limited time, and in the interval commits any crime or offence in breach of the Mutiny Act or the Articles of War, be subject to military law, and amenable to a Court-Martial for his conduct. Suspension has the effect of depriving an officer of his rank and pay, and putting a stop to the ordinary discharge of his military duties, but it does not void his commission, annihilate the military character, or dissolve that connection which subsists between him and his Sovran, of whom he is a servant. The suspended officer remains, therefore, subject to military law, and is punishable for every breach of it committed during his suspension.

Aliens.

According to Chief Justice Hale, *Aliens* who, in conjunction with domestic traitors, endanger the safeguard of a state, by exciting rebellion and insurrection among its native

* Tytler, 113.

subjects, or stir them up to individual acts of treason, are punishable by Martial Law. It is usual only to detain prisoners of war until they are exchanged by cartel, or until the return of peace restores them to liberty, and in the meantime to treat them as well as circumstances will admit; but if they are guilty of anything that would be rebellion, treason, or sedition in a subject, to bring them to trial by Court-Martial.*

Peers and Members of Parliament.

Peers and Members of Parliament do not appear to be protected by privilege from trial by Court-Martial. This has been a subject of discussion both by Tyler and Simmons. Privilege of parliament is granted in regard of the service of the commonwealth, and is not to be used to the danger of the commonwealth; and certainly it may readily be argued that it would be dangerous to the commonwealth to allow *privilege* to offer any serious interference to the discipline of the army. At any rate, the practice has been, first to place the peer or member under arrest; and then the Secretary-at-War, or some other minister of the crown being a privy-councillor, informs the house that he has been commanded to acquaint them of the arrest and the cause of it.† This course does not seem to have been objected to by either house. When a member of the House of Commons has been convicted by a Court-Martial, "of scandalous and disgraceful conduct," the house usually consults its own dignity by expelling the offender, as was done in the case of Colonel J. F. Cawthorne in 1796, by a majority of 108 to 102.

Certain Civilians under Military Law.

Besides the classes who act in a strictly military capacity, certain civilians connected with the commissariat and ord-

* Tytler, 121.

† May, on Parliaments, 2nd edition, pp. 131, 334.

nance departments are, under peculiar circumstances, brought within the scope of the act; and it may be laid down as a general rule, that all followers of the army abroad, whether sutlers or others, are subject to military law, and liable to be tried and punished by military courts.

The Judge-Advocate.

Every General Court-Martial is attended by an officer, styled the Judge-Advocate, who has powers with respect to prosecution similar to those of the Attorney-General. His presence and assistance are essential to the jurisdiction of a General Court-Martial. He is appointed by the warrant of the convening authority, and cannot in any way be challenged.* His duties are various and important. Not only is it his duty to inform the court of the necessary forms to be observed in their proceedings, but he ought also to explain to them the common law upon all those points where the Mutiny Act and the Articles of War are silent; as in such cases the rules of the common law must be resorted to. It is generally understood, that the parties before the court have a right to the opinion of the Judge-Advocate either in or out of court, on any question of law arising out of the proceedings; and whenever he is called upon to give an opinion in open court, it is recorded. He can however *only* advise. He has to take care that the prisoner does not suffer from his want of knowledge of the law, or inexperience of courts; he is to this extent the adviser of the prisoner, but not his counsel: which would be incompatible with his position as prosecutor. He is bound to take care that no illegal evidence does appear, and to see that the prisoner has an opportunity of a fair defence. He also records the proceedings of the court and the whole of the evidence, in writing, as nearly as may be in the words of the

* Simmons, 175–6.

witnesses. When the proceedings of the court are concluded it is his duty to transmit an accurate detail of them, including the finding and sentence of the court, to the office of the Judge-Advocate-General in London.*

Judge-Advocate-General.

At home the Judge-Advocate-General is usually a lawyer of eminence; but, except in very important cases, his place is supplied by a deputy. On foreign service this duty is discharged by a military officer selected for his knowledge and experience. The Judge-Advocate of the army at present in Turkey is however a lawyer.

Judge-Advocate cannot protest.

If the court, as sometimes happens, persists in an illegal course, against the advice of the Judge-Advocate, the latter, though not entitled to enter his dissent in the form of a protest, is at liberty to engross upon the proceedings of the court the opinion delivered by him on the disputed point; and this, as well for his own justification, as to bring the matter within the notice of the authorities, with whom it lies to remit or confirm the sentence.†

Prisoner right to be present at trial.

No proceedings in open court can take place except in the presence of the prisoner; he is occasionally attended by the Provost-Marshal, at other times by an escort or guard, or by a commissioned officer, as his rank, or the nature of the charge may dictate.

Prisoner's Counsel.

Accommodation is usually afforded, on the application of the prisoner, for any friend or legal adviser, the benefit of whose assistance he may desire during trial. Counsel may

* Mutiny Act, 1853, sec. 17.

† Law Magazine, vol. 14.

examine witnesses for the defence, and cross-examine the witnesses for the prosecution, but he is not permitted to enter into any argument, or take objections to the proceedings of the court; though undoubtedly he may suggest them to his client. Still less is he permitted to address the court on the defence; and to so great a point is this carried, that though the court will allow a non-legal friend, particularly a military man, to read a defence for the prisoner, yet it seldom grants that liberty to counsel.

There is no reason given for this rule, except the very questionable reason of Sir Charles Napier, "that the ideas of legal men and those of soldiers are so different as to the mode of conducting a trial, that he thinks a prisoner seldom finds that he profits much by their advice; they are dexterous, and greatly *impede* the progress of the court. A soldier does best when he defends himself; he speaks the same language as his judges." To this, there is a very ready answer, that the mode of trial is substantially the same in a Court-Martial as in an ordinary criminal court; the principles of accusation and answer, and the rule of evidence, are the same for both. It is notorious that good advocates greatly assist a court of justice. Formerly *all* prisoners, previously to the passing of the "Prisoner's Defence Act," were on the same footing as soldiers before a Court-Martial; fear of the control of a legally educated mind careful of order and law, was the motive for not extending the same measure of justice to the officer on his trial of honour, and to the civilian when in danger of life or liberty. It is well remarked, "that it would add much to the high character which military courts possess for strict impartiality, if these restrictions were removed. When we consider that men of very little or no education are often placed as prisoners, though perfectly innocent of the crimes

laid to their charge, in situations which embarrass and perplex even men of cultivated understandings, it seems as cruel as it is needless, to deprive them of the aid of those, who by their exercised skill in disrobing facts of appearances which do not belong to them, and dissevering them from others with which they have no essential connection, may often prevent that most deplorable of all the consequences of human fallability, the condemnation and punishment of the innocent."*

Arrest. Whenever a soldier commits a crime deserving punishment, his commanding officer puts him in arrest; if a non-commissioned officer or a soldier, he is imprisoned until he has either been tried by a Court-Martial, or lawfully discharged. A difference in the nature of the arrest is established by the custom of the army. Upon an accusation of a capital offence, or any offence of which the penalty is so severe as to afford a natural temptation to escape from justice, an officer would be detained in a state of confinement as secure as the closest imprisonment. If the offence be of a lighter nature, the presumption is, that the officer whose character is thus impeached will be anxious to clear himself; and he is therefore generally allowed to be in arrest at large, that is, to walk about within certain limits, without his sword, (which he delivers to the adjutant), on his word of honour to await the issue of the trial, or his enlargement by the proper authority. Neither an arrest or a confinement can last more than eight days.

Copy of Charges furnished to Prisoner. To enable the accused to prepare for his defence, and advise his counsel on matters pertaining to the trial, it is the duty of the Judge-Advocate to prepare and furnish him with a copy of the charges intended to be brought against him.

* Law Magazine.

The Charge or Charges on which a prisoner is to be tried before a court martial, are, properly speaking, an indictment, and must in their *substance* possess all its essential requisites; although in form, the military judicial procedure is less fettered by peculiar and customary solemnities of expression than the civil. The charges should express and specify the offence clearly; and the act or acts of guilt be pointedly charged against the prisoner. Also time and place, when and where the crime was committed, should be set forth with all possible certainty and precision. Thus, if the crime charged is mutiny, the particular acts of mutinous conduct must be clearly and distinctly enumerated: as for example, entering forcibly and with arms into a guard-house and releasing a prisoner; using traitorous expressions against the Queen; contemptuous and disrespectful language towards a superior officer, or offering specified acts of violence against him; urging fellow soldiers to resist military orders; persuading them to revolt to the enemy, and so on. The Charges.

There is one class of offences, in which a distinct specification is more particularly necessary. "Scandalous and infamous conduct" must be specified.

This specification is the more necessary in the two military offences depending on inspection, namely *scandulous and infamous* conduct in an officer, and *disgraceful conduct* in a soldier. The Articles of War formerly enjoined that in every such charge preferred against an officer, the facts whereon the same is grounded should be clearly specified. This is the only instance of a military crime in which the Articles of War particularly enjoin that the charges should contain a clear or distinct specification of the facts; but though the clause is now discontinued the spirit of it is still acted upon. Without such a specification, it is most probable that the court would at this day throw out the charge altogether.

Arraignment upon several offences.

Contrary to the rules of the civil courts, a prisoner may be arraigned before a Court-Martial for different crimes, at the same time, but they must all be distinctly set forth in distinct and separate counts or charges.

Charges read aloud.

Before proceeding to trial the court should be cleared, and the charges should then be read to the prisoner by the Judge-Advocate, in an audible voice; and it his duty to remonstrate against proceeding to trial on a charge that is deficient in accuracy or perspicuity. If there appears any objection to the legality of the trial which is self-evident and insurmountable, such as that the prisoner is not subject to military law, or that the crime charged is a civil offence, the court ought to suspend their proceedings and to submit the objection to the consideration of the authority by which it is assembled; and it is both the right and duty of the court to reject loose and erroneous charges.

A General Court-Martial ought further to satisfy itself that the facts alleged in the charge do constitute the offence alleged in it, and that they are described in a *legal* manner. A charge once approved of by the proper authority, cannot be altered or amended, except by the consent of that authority.

Evidence of Military character before Plea.

Pleas in Bar.

Evidence having been first given that the prisoner is a military person, he is called upon to plead. Several special pleas in bar, may be pleaded in a Court-Martial; such as a former trial for the same offence, a pardon, (either full or conditional), and want of sufficient specification in the charges. If the prisoner does not put in a special plea, he is required to plead "guilty," or "not guilty." In either case the trial proceeds, for it is essential that the facts and particulars should be known to those whose duty it is to report on the

case, or who have discretion in carrying the sentence into effect. Formerly if the prisoner stood mute, or refused to plead, the court at once convicted him of the charges, and proceeded to sentence, as was done in 1811, by a Court-Martial held at Jamaica, on Captain John M'Intyre, of the 7th West India Regiment, who being arraigned on various charges, stood mute, and refused to plead. He was sentenced to be cashiered, and declared unworthy of ever again serving his Majesty in any military capacity. This custom of Courts-Martial was grounded on that of the common law courts; but it has now been declared by statute, that if a prisoner refuses to plead, the court may, if it shall think fit, order a plea of not guilty to be entered. It is submitted by Captain Simmons, that if such a case should again occur, the court would only be acting in the spirit of the order as to "pleas of guilt," in conformity to the existing practice of the common law courts.* If a prisoner stands mute by the visitation of God, a plea of "not guilty" should be entered.

Prisoner standing mute.

In addition to the pleas in bar that are mentioned above, the prisoner may plead that he has been previously acquitted or convicted for the same offence;—that he has been previously *punished* for the same offence;—or (if a *soldier*) that he has been *ordered* punishment for the same offence, the punishment not having yet been executed, and being such punishment as his commanding officer could order, unless he himself appeals to a Court-Martial against the order; and it would appear that where clearly made out, *even* if previous punishment *is not pleaded*, the court may decline to investigate a charge upon an offence for which previous punishment has been awarded,† or to award further punishment.

Autre-fois, convict or acquit.

* Simmons, p. 213; Queen's Regulations, p. 227.

† Simmons, 216.

A pardon may be pleaded.

A pardon may be pleaded in bar of trial; if full, it is sufficient, but if conditional, the condition must have been performed. It would seem also that a release by the prisoner's commanding officer, or under special circumstances, will have the same effect as a pardon; unless fresh facts appear against the prisoner, and such a release presents no bar to his being tried.*

Also release.

Statement of the case for prosecution.

Before entering on the examination of the witnesses, it is usual for the Judge-Advocate, or the officer appearing as public prosecutor, to state briefly to the court the circumstances which led to the trial, and to show the criminal nature of the offences charged upon the prisoner. He then examines the witnesses for the prosecution, who are afterwards cross-examined by the prisoner or his counsel. But before examination, he usually reads over to each witness separately, the charges; the witnesses having been out of court when the charges were read, in fact until the moment of examination.

Proceedings. Witnesses.

When the cross-examination of each witness is finished, the court may put to him any question it pleases, either to explain the evidence he has already given, or to obtain information on points which the prosecutor has altogether omitted, or only slightly touched upon. The evidence of each witness is taken down in writing by the Judge-Advocate, who afterwards reads it over to him, that he may say whether it is correct or not, and make such alterations as may be necessary. Every alteration however must be made by addition, and not by erasure. Even when a question is not permitted to be asked, either by the prosecutor or the prisoner, the question must appear on the proceedings.

* Simmons, 218.

All witnesses must be examined apart, with the exception of the Judge-Advocate, who, being necessary to the court, must remain in; but to obviate inconvenience, if he is a witness, he generally gives his evidence first. The other witnesses are excluded until examined; and remaining in court would disqualify as a witness, if either prosecutor or prisoner chose to insist upon it. The examination of the witnesses for the defence is conducted in the same manner as that for the prosecution. The several members of a Court-Martial as judge or juror are competent witnesses, both for and against the prisoner, as is also the Judge-Advocate. The witnesses are examined on oath; every question being previously reduced to writing and handed to the president for his approval.

Questions reduced to writing.

Courts-Martial are in general guided by the rules laid down in the civil courts respecting the nature and admissibility of evidence. The numerous rules are of course not within the limits of this treatise, but must be sought for in treatises on evidence; but there are some rules peculiar to Courts-Martial that we are bound to mention. 1. All parties may object to any question; the whole court decides whether it shall be put, and are alone the judges as to what evidence shall be admitted or rejected. 2. The examination of witnesses should take place in the presence of *all* members of the court; no act performed by *part* of a Court-Martial can be legal; the unavoidable absence of any member by sickness or otherwise, at any period, necessarily prevents his resuming his seat. Whenever a member leaves the court by the president's permission, the Judge-Advocate ceases to record any evidence during his absence. 3. If a witness, absent from sickness, is within a convenient distance, the whole court must adjourn to the witness's house,

Rules of Evidence.

hospital, or place wheresoever he may be; the evidence of the sick man is then taken, the court returns to its former place of assembly, and the trial proceeds. 4. Where witnesses are at a distance they are examined by interrogatories, and the answers taken before a justice of the peace; but as this practice may delay the court, a more convenient and equally sufficient method is, for the *parties*, or *persons duly appointed by them*, and *the witness*, to appear before a justice of the peace, and that his examination should be taken in the same manner as if he were examined before a Court-Martial.

Prisoner's defence.

When the whole of the evidence is closed, the prisoner may request a reasonable time to prepare his defence; an indulgence that is usually granted. In the conduct of his defence, the prisoner is allowed the greatest latitude, consistent with the dignity of the court. However injudicious may be the nature of the defence, the court cannot refuse to hear it, or the evidence adduced in support of it, merely on the ground of its uselessness, or of its irrelevancy to the charge.

Greatest latitude allowed.

Lieutenant Dawson's case.

On one occasion, a lieutenant in the artillery, (Lieutenant Dawson), in 1823, at Malta, refused to obey an order from the adjutant to fire a salute at a stated hour, in honour of Saint Lorenzo, and to toll the castle bell, taking his time for firing from the tolling of the bell in the church of Saint Lorenzo. The lieutenant, who was a person of strict religious principles, conceiving that the order was an utter violation of his rights as a Protestant, and that he could not legally be required to obey it, refused to fire the salute, or toll the bell. For this conduct he was brought to trial for disobedience of orders. The prisoner in the course of his

defence, proceeded to read certain extracts from the Homilies, respecting the honours and worship paid to saints and images, as showing the acknowledged doctrine of the legally established church on the subject; he was stopped by the court, on the ground of irrelevancy. When the proceedings arrived in England, for approval, the Judge-Advocate General* immediately sent back the papers to Malta, with the Commander-in-Chief's orders that the court should reassemble, and revise the proceedings; pointing out that the defence could not be precluded because it was irrelevant; for if the line of defence adopted by the prisoner were injudicious it was to his own harm, and the court must hear it, unless it contained matter of a treasonable nature or disrespectful to the court. The court, in consequence, admitted the whole of the prisoner's defence, but made no alteration of its former sentence, which was dismissal from the service.

Prisoner not generally to advert to third parties.

The court will prevent a prisoner from adverting to parties not before the court, or only alluded to in evidence, further than may be actually necessary to his own exculpation. The accused may sometimes find it absolutely necessary in his own defence to throw blame, and impute even criminality, on others who are no parties to the trial; nor can a prisoner be refused that liberty; the party accused, if unjustly accused, can find redress in the regular course of law.

His defence may be read by a friend, &c.

If the prisoner, from illness or nervous excitement, be unequal to the task of reading his defence, it may be read for him by some friend not employed in a legal capacity: his legal adviser is not in general considered an appropriate party to read it; or the prisoner may request the Judge-

* Sir John Beckett.

Advocate to read it for him; but this rule of exclusion of late years has been broken through on many trials, and the prisoner's address has been read by the barrister or attorney employed professionally to conduct the defence.*

Evidence to character.

A prisoner generally endeavours to close his case with some evidence as to character; and Courts-Martial, regarding character with broader and stronger views than courts of civil judicature, do not require the same strictness which requires that evidence as to character should bear analogy and have reference to the nature of the charge in issue: it is even customary to allow a prisoner to introduce in his defence, or lay before the court, *letters* relative to character, which are then attached to the proceedings, to allow the authority confirming the sentence to estimate their due importance and influence.†

The reply.

When the defence is closed, the prosecutor, if he wishes it, requests permission to reply; and he sometimes replies immediately, or after a short adjournment of the court; or if the proceedings, especially the defence, are voluminous, a day or two is requested to prepare the reply, which is usually granted.‡

It has been the opinion of several eminent lawyers that in all cases where the crown is interested, the crown has a right of reply. Courts-Martial however follow the *practice* of criminal courts, and a reply is not generally allowed, unless the prisoner has in his own defence *examined witnesses*, or *put in documentary evidence*, or has in his address opened new facts upon *his own assertion*. In this last point

* Tytler; Simmons; Griffiths.
† Simmons, 409–506.
‡ Hughes.

Courts-Martial differ from other courts; for personal assertions being generally made upon "honour as an officer and a gentleman," come to the feelings of a military court almost with the weight of evidence on oath.

Evidence to support the Witnesses for prosecution.

If in the course of his defence the prisoner has attacked the character of the witnesses for the prosecution, the prosecutor has a right to bring fresh evidence, as far as may be necessary to support the character of his witness's credibility. If the prisoner in his defence introduces fresh matter, of which the prosecutor could not be aware, the latter has a right to call in fresh witnesses to bear upon this new matter. Those witnesses may then be cross-examined by the prisoner, and he is allowed to make observations on the prosecutor's reply: *the prisoner has a right to speak last.**

Trial closed. Proceedings read over.

The prosecution and the defence being concluded, the court is cleared and the doors are closed; the Judge-Advocate then reads over the whole proceedings, or sums up the evidence, as may be most agreeable to the court.† A discussion generally takes place; and when the members have made up their minds, the president desires the Judge-Advocate to put the question of guilty or not guilty. The question is put to the junior member (in rank) first, and so upwards to the president; this order being adopted probably to prevent the younger from being influenced or overawed by the opinion or vote of the elder members. If more than one charge has been made, each is separately gone through; the Judge-Advocate writing down each member's opinion or vote. The votes are then counted, and the verdict is given accordingly. The finding may be special, and a prisoner

Mode of Voting.

* Napier, 92.
† Hughes, 80.

Majority.

be acquitted of part of a charge and found guilty of the remainder: the majority decides. The proper number of a Court-Martial is uneven, but sometimes from necessity the number is even, and there may be an equal division of votes; in this event the prevailing custom of the army is, that the prisoner should have the benefit of an acquittal.

Verdict.

If a verdict of acquittal has been found, the duties of the court, (except in cases of revision), are at an end; but if the prisoner has been found guilty of the whole, or any part of the charges, the court proceeds to award the punishment. The court is again opened to the public, and the parties before it are recalled, to give evidence relative to any previous convictions, either of Courts-Martial or courts of ordinary criminal jurisdiction. This evidence the court is bound to receive.* In the case of a *soldier*, the court is bound also to enquire into his previous character, for its guidance in awarding punishments. The sentence which each member deems suitable to the crime of which the prisoner has been found guilty is ascertained in a similar way to that in which their opinions of his guilt have been collected.†

Previous convictions and character.

Proceedings signed for confirmation.

The president then signs the proceedings, which are submitted to the authority empowered to confirm the sentence. The superior authority, (in the same manner that a common law judge may send back a jury to reconsider their verdict), has a power to order *one* revision of the finding, opinion, or sentence of the court; but this revision cannot be made more than once,‡ and no fresh evidence can be called when the court sits for revision.

* Queen's Regulations; Hughes, 36.

† This applies both to officers and soldiers; Mutiny Act, 1854, sec. 16.

‡ Simmons, 361.

The sentences which it is competent to a Court-Martial to inflict, are, in the case of commissioned officers, confined by the Mutiny Act, the Articles of War, and the custom of the service, to the following:—death, transportation, penal servitude, fine, imprisonment, and cashiering*. Sentence.

To this we shall add, that in two instances officers may be cashiered through the medium of the civil power. By the Mutiny Act† any commanding officer neglecting or refusing, on application made to him, to deliver over to the civil magistrate any officer or soldier under his command, or wilfully not assisting the officers of justice in apprehending any officer or soldier under his command, so accused as aforesaid, such officer on conviction thereof in any of her Majesty's Superior Courts at Westminster, Dublin, or Edinburgh, is deemed to be thereupon cashiered, and is thenceforth utterly disabled from holding any civil or military office or employment in the United Kingdom of Great Britain and Ireland, or in Her Majesty's service.

And by the 93rd section of the Act, the same penalties are denounced against any military officer taking upon himself to quarter soldiers, otherwise than is by the act allowed, or using any menace or compulsion to magistrates, constables, or other civil officers, to induce them to act contrary to their duty; on conviction thereof before "any two or more justices of the county by the oaths of two credible witnesses."

It is to observed, that a Court-Martial cannot award two punishments quite distinct in their nature, for the same offence. Thus, an officer placed at the bottom of the list of his rank, cannot also be imprisoned; nor can a soldier be imprisoned to whom corporal punishment is also awarded.‡

* At the end of this volume will be found a table of punishments peculiarly for military offences; for other classes of offences, I must refer the reader to the ordinary works on criminal law.

† Act, 1853, sec. 82. ‡ Law Mag.

It sometimes happens than an individual holding a staff or civil appointment is brought to trial before a Court-Martial; in such cases, if the prisoner be convicted, it is irregular for the court to pass a sentence having reference to an appointment held by the prisoner. If a brigade-major, paymaster, adjutant, or any staff officer, or a surgeon, apothecary, or hospital assistant, employed on the staff or in a civil capacity, be brought forward and convicted, the court must not sentence the offender to be removed from his staff or civil appointment, but should award the legal punishment.*

No military person who has been acquitted or convicted of any crime or offence by the civil magistrate, or by the verdict of a jury, is liable to be again tried for the same crime or offence by a Court-Martial, or punished for the same, otherwise than by cashiering.† Formerly this was otherwise, and an officer could be punished by Court-Martial, by cashiering. The alteration took place in 1807, and the clause, as it now stands, seems to restrict the Queen's prerogative of cashiering or dismissing any officer to the one alternative of cashiering, in those cases where she may see fit to remove any officer from the service for an offence which may have been disposed of by the civil power.‡ That the power of re-trying an officer by a Court-Martial was ever changed is surprising: it might have been thought that the ancient power of bringing an officer to trial, although *acquitted* by a civil court, was necessary to maintain the high character of the army. A delinquent is often acquitted by a civil court, through the omission of some necessary formality, although his guilt may be perfectly clear; and it is hard on the service that such an acquittal shall preclude any further *public*

* Hughes, 94.

† Mutiny Act, 1853, sec. 51.

‡ Simmons, p. 13, note.

inquiry.* Now the onus, and odium it may be, of a subsequent dismissal, rests with the Crown.

Approval and Confirmation.

The sentence of a Court-Martial, unlike the sentence of a court of ordinary jurisdiction, which is complete when pronounced, is inoperative until confirmed by the Sovran, or some officer duly authorized under the sign-manual; or in India by an officer, who without other authority, (the article of war to the contrary notwithstanding,) is empowered by the Court-Martial Act.†

For this purpose the Judge-Advocate of a General Court-Martial, or the President of a District or Garrison Court-Martial, transmits with as much expedition as the opportunity of time and distance of place can admit, the original proceedings and sentence, to the Judge-Advocate-General in London, in whose office they are carefully preserved, and at which only can a copy be obtained.‡

The Commander-in-Chief of the army abroad, and officers commanding on foreign stations, have this authority included in the warrant by which they are empowered to convene Courts-Martial; but this power does not extend to cases where commissioned officers are sentenced to death, or to be cashiered or dismissed: except in India, where the power of the Governor-General to approve and confirm is unrestricted,§ As to the sentences of inferior military courts which have not power to inflict capital punishment, they may be approved of (except in very rare cases) by the authority which convened them. General officers commanding stations at home and in the Channel Islands are not empowered to approve of the sentences of general

* A court of inquiry can scarcely be called a public inquiry.

† Simmons, p. 358.

‡ Mutiny Act, 1853, sec. 17.

§ First given in 1813, when Marquis of Hastings was Governor-General.

Courts-Martial held within their commands, but must refer them through the Judge-Advocate-General to the approbation of the Crown. As a general rule, the person empowered to approve, can mitigate, commute, or remit altogether the sentences of Courts-Martial. Thus a sentence of six months imprisonment may be mitigated to three; or corporal punishment be commuted (with the consent of the delinquent) for imprisonment. But it is in the province of the Queen only* (or in India, or in places beyond the Queen's dominions, the Commander-in-Chief of the forces there serving,) to commute capital punishment for transportation, or to remit sentences whereby pay and pension have become forfeited for desertion.

If the person to approve is satisfied with the proceedings and decision of the court, he writes below the president's signature, the words "approved and confirmed," to which he subscribes his name. There is however a difference between approval and confirmation. Thus, if the commanding officer or person to approve, should consider the sentence too lenient, he may confirm, though not approve of, the sentence; thinking it better that the delinquent should be visited with some, though in his opinion insufficient, punishment, than escape altogether. In this case he writes before his signature, the words, "confirmed, but not approved." The withholding of his approval makes no difference in the infliction of the sentence, and is merely done to justify himself with the higher powers, and testify his sense of the inadequacy of the punishment.†

Revision. The authority by which a General Court-Martial may be confirmed is competent to order a revision; but no finding, opinion, or sentence, given by any Court-Martial, and signed by the President, is liable to be revised more than once; nor

* Mutiny Act, 1854, sec. 21. † Law Magazine.

can any additional evidence be received by the court upon revision.* Everything relating to the revision, including the order for that purpose, is entered on the proceedings: no erasure is permitted, and any alteration must be made by addition. It seldom occurs that a revision leads to any alteration; the courts are in general very jealous of their dignity; and the surest way for a commander to incur odium with the army would be to attempt to interfere, without very strong grounds, in their decisions. If, after revision, the Sovran is still dissatisfied with the sentence of the court, on the score of leniency, she can still deprive the accused, if an officer, of his commission, by the exercise of her prerogative of dismissing any officer from her service at pleasure. It has been well remarked, that "this power is very objectionable. Considering that most officers purchase their commissions, it is quite enough that the crown should have the power of dismissing them without trial; but to put it in force against men who have been declared innocent, after solemn trial by a court which never allows a mere quibble or informality to protect the guilty, is not only offensively arbitrary, but an absolute mockery of justice."†

Punishments.

It now only remains to give some description of the punishments of the army.

Transportation, with reference to military offences, is applicable to an officer only on conviction of embezzlement; to a non-commissioned officer or soldier, on conviction of embezzlement, or of any offence punishable by death.

Reprimand.

Officers are also liable to be reprimanded. Reprimands vary from a public and severe reprimand, to a private

* Mutiny Act, 1853, sec. 18.

† Law Magazine.

admonition; public reprimands are either given at the head of the regiment, paraded for the purpose, or published in in general orders. A private reprimand is usually given by the commanding officer of a regiment or brigade, at his quarters, in the presence of the officers of his regiment, or of officers of equal or superior rank only, or simply in the presence of a staff officer.

Apologies.

Sometimes, in the cases of Courts-Martial arising from disrespect to superior officers, or in consequence of quarrels, written or verbal apologies are dictated; especially when unpleasant consequences are apprehended, from the position or temper of the parties, when the restraint of the Court-Martial is taken off.

Corporal Punishment.

Corporal punishment is only applied for mutiny, insubordination, and violence, or using or offering violence to superior officers; for drunkenness on duty; for selling or making away with arms, ammunition, accoutrements, or necessaries; stealing from comrades, or other disgraceful conduct.* It can be inflicted only on private soldiers, or non-commissioned officers who have been reduced to the ranks.

Imprisonment.

Imprisonment may be with or without hard labour, of which fourteen days at a time may be solitary, provided that not more than eighty-four are solitary in the course of the year, with not less than fourteen days between each solitary period.† There is not any positive enactment as to the extent of imprisonment which may be awarded by a General, or District, or Garrison Court-Martial; but the

* Queen's Reg., p. 230.

† Mutiny Act, 1853, sec.

regulations and orders of the army have for many years pointed out that "the nature and extent of punishment must of course vary according to *locality*, and particularly according to *climate*, as extremes of heat and cold equally prescribe caution. But it is very desirable that these punishments should not be extended too far. Two months solitary confinement may be considered sufficient in most cases, and six months imprisonment with hard labour equally so."*

Cashiering; to bed ismissed the service (with incapacity to serve again, for embezzlement only); loss of rank; reprimand or admonition; and in the East India Company's service, suspension from rank, and loss of pay, transportation, and death are the only punishments inflicted on officers. Warrant officers are liable to death, transportation, fine, imprisonment, discharge, and to be reduced. Non-commissioned officers, when a capital punishment is not awarded, are first reduced to the ranks, and after that are subject to any of the punishments appointed to private soldiers. Private soldiers can be adjudged to death; corporal punishment, not exceeding two hundred lashes; imprisonment, with or without hard labour; imprisonment, part of which may be solitary; loss of pay; loss of pay and pension, in addition to other punishments; forfeiture of all additional pay whilst serving, and of pension on discharge; marking with the letter D, as a second additional punishment for desertion; deprivation of liquor where issued in kind, or beer, or liquor money, and pay, for drunkenness; fines of one penny a day, not exceeding thirty days, for drunkenness on parade, or on line of march; and on conviction of disgraceful conduct, the court may, as a cumulative punishment, recommend that the prisoner be discharged with ignominy.†

* Simmons, p. 352; Queen's Reg., p. 229, par. 21.

† Mutiny Act, 1853. Hughes, 95, 96.

Sentence of Death.

Although the majority of a single vote is sufficient to convict a prisoner of a crime not punishable by death, yet that punishment cannot be inflicted, except with the concurrence of *two thirds* of the members of the court.* "By this admirable regulation, sufficient assurance seems to be given that the last sentence of the law shall not be passed where it is not clearly merited; at the same time that the custom requiring the concurrence of all the jurors in a trial by jury, is avoided. Capital punishment is rarely resorted to in the British Army, except on active service. During the Peninsular war it became necessary to inflict it oftener than had been usual, to repress the crimes of desertion and plundering, which had become more frequent from the example of the foreign soldiers introduced into our ranks."†

Military Execution.

Military Executions are attended with great parade and solemnity; and in no service or country is the ceremony so awful and impressiveas in the British. It usually takes place by shooting. An execution party, consisting of ten or twelve men, commanded by a sergeant, (usually of the doomed man's regiment,) is placed under the order of the provost-marshal. All the guards of the garrison and advanced posts leave their sentries at their respective stations, and repair to the provost-marshal's guard, at an appointed hour, to escort the prisoner to the place of his execution. All the guards, as well as the execution parties, under the immediate direction of the provost-marshal, are commanded by the field-officer of the day.

The several corps of the line, at the appointed hour and place, parade three deep, and are prepared to draw up, so as to form three sides of a square facing inwards. The prisoner,

* Mutiny Act, sec. 20.

† Law Mag.

escorted by a detachment, is brought to the ground. The provost-marshal heads the procession, followed by the band of the prisoner's regiment, with drums muffled, playing the "Dead March in Saul;" the execution party comes next; then four men, bearing on their shoulders the prisoner's coffin, which he, usually attended by a chaplain, follows; the escort brings up the rear. The procession passes along the front of the three faces of the open square; at the flank of each regiment, the band of that regiment plays the "Dead March in Saul," as long as the procession is in front of it. On arriving at the open space left on the fourth side of the square, where the coffiin is deposited, the music suddenly ceases: at that spot the prisoner stands,—it is the spot of his execution; the dread ceremony is then drawing to a close; in the midst of the deepest silence, the sentence and order of death are read aloud—the chaplain rises from his knees and retires from the prisoner—the signal is given—and the fire of the execution parties puts an end to the prisoner's existence.

Section IX.

On the Exercise of Authority.

The nature of Military Authority.

One of the most important questions both for the soldier and the public to comprehend is, the extent and mode of application of military and naval authority, in operations against the enemy, as well as when the military power is called upon to suppress civil commotion. Cases occur in which the power accorded to the commander of a military force is, and ought to be, unbounded, and demands for its exercise implicit obedience from the subordinate officer and the soldier. A subordinate officer must not judge of the danger, propriety, expedience, or consequence of the order he receives; he must obey: nothing can excuse him but a physical impossibility. A forlorn hope is devoted—many gallant officers have been devoted; fleets have been saved, and victories obtained, by ordering particular ships upon desperate services, with almost a certainty of death or capture.

Before the Enemy.

In the day of battle, commanders must act upon delicate suspicions, upon the evidence of their own eye; they may find it necessary to give desperate commands; and they must require instantaneous obedience. Thus, incident to situations, the greatest power and the widest latitude is accorded to the commanding officer: the *abuse* of his power seems to be the only boundary limiting the extent of authority. Lord Mansfield says: "there is a wide difference between

indulging to situation a latitude touching the *extent of power*, and touching the *abuse* of it. Cases may be put of situations so critical that the power ought to be unbounded; but it is impossible to state a case where it is necessary it should be abused; and it is the felicity of those who live under a free government, that it is equally impossible to state a case where it can be abused with impunity."*

Abuse of Authority.

The same learned judge explains with equal precision and clearness what is exactly meant by an abuse of authority. He says:—"In trying the legality of acts done by military officers in the exercise of their duty, particularly beyond the seas, where cases may occur without the possibility of application for proper advice, great latitude ought to be allowed, and they ought not to suffer for a slip of form, if the intention appears to have been upright; it is the same as when complaints are brought against inferior civil magistrates, such as justices of the peace, for acts done by them in the exercise of their civil duty. There the principal enquiry to be made by a court of justice is, how the heart stood? and if there appears to be nothing wrong there, great latitude will be allowed for misapprehension or mistake. But on the other hand, if the heart is wrong, if cruelty, malice, and oppression, appear to have occasioned or aggravated the imprisonment, or other injury complained of, they are not allowed to cover themselves with the thin veil of legal forms, nor escape under justification, the most technically regular, from punishment."

"Thus, for example, if an officer in delicate health leaves his post, trusting to the benevolence of his superior to consider the circumstances, there being no enemy—no mutiny—no danger of escape, it may be the duty of the superior to

* Sutton *v.* Johnstone, 1 Term R. 504.

call the subordinate to a military account of his misconduct, but that would be no apology for shutting him up in an ill-ventilated prison, and keeping him there to await his trial, to the further injury of his health."*

Remedy against an Abuse of Authority.

For an abuse of military authority, whether with respect to military men or civilians, the law has provided punishments and remedies. Both by the Mutiny Act and the Articles of War, any officer would be liable to be tried by a Court-Martial for cruelty of conduct, or abuse of authority; but, in addition to this, a legal remedy is afforded to the injured party, whether he is a military man or a civilian.

It is an erroneous position to suppose that a military man can have no remedy against ill-treatment received from another, except by a Court-Martial, which can give no damages;† or that no action lies if the parties are military persons, and if the act complained of were done in a military capacity, no matter how groundless or excessive the act may be; no matter what one party is bound to do, or the other to enforce. There may be questions of nicety in particular cases, but it can never be that a subject, by embracing the military profession, becomes an outcast from the law of the land and can only appeal to military law for redress. At the same time no action is maintainable for an injury of this kind, unless the wrong is accompanied by malice or injustice. To a slip of form, or an innocent error, great latitude is allowed; it is simply denied to a *corrupt abuse* of authority.

Examples.

To illustrate this principle we shall proceed to give some examples of what the law has looked upon as a corrupt abuse of power. An excess or unnecessary degree of vio-

* Wall *v.* Mac Namara, 1 T. R. 536.

† 4 Taunt. p. 78.

lence, or indignity, may be the cause of legal remedy, even though the original act was within the jurisdiction of the offending party. Thus in a case at Gibraltar, where both parties were officers, one, the subordinate, was directed to give a military order; he sent two persons and they failed. The other then said, "what a stupid person you are," and twice struck him; and although the circumstances occurred in the actual execution of military service it was held that the violence was actionable.*

Similarly, unjust treatment under the *form and colour of discipline* cannot be justified under the necessity of discipline; still less will a superior officer be permitted to excuse himself before a court of justice under a plea of discipline to a complaint for cruelty and unnecessary severity when wilfully committed in the exercise of superior authority.

The captain of the *Trident* man-of-war imprisoned his purser for a supposed breach of duty, for three days, without inquiring into the matter, and then released him on hearing his defence. Such conduct was held by Lord Mansfield not to be a proper discharge of the captain's duty, and that he could not justify himself under the rules applying to the discipline of the navy.†

On the same principle a military officer recovered damages against the officers of an East India Company's ship for cruelty in compelling him, on his passage to India, to submit to a ducking on crossing the line.‡

Undue assumption of Authority.

An undue assumption of authority in matters not within the range of military discipline, is an abuse of power furnishing a good ground of action against a superior officer.

* Grant *v.* Shard, 4 Taunt. 85.

† Swinton *v.* Malloy, 1 T. R. 537; Wall *v.* Mac Namara, Ibid. p. 536.

‡ Man *v.* Learmouth, Midland and Weobly's Remarkable Trials.

Thus an action was upheld which was brought by a serjeant against his colonel, who imprisoned him for disobedience to an order made under colour, but not within the scope, of military authority. It was an action for false imprisonment, brought by a serjeant in the local militia against the adjutant in that militia. An order had been made by the colonel that the serjeants and corporals should attend an evening school for the purpose of learning to read and write; the serjeant-major was to be schoolmaster, and all the men were to pay 8*d.* per week to defray the school-master's salary and expenses. The order to attend the school was most probably bad, as an excess of authority; but the order to pay 8*d.* per week, which was an order of taxation, that could only be imposed by parliament, was clearly so. It is no legal objection to an action for the abuse of military authority, that the defendant has not been tried and convicted by a Court-Martial, for that argument holds in no case short of felony.*

Bodies of Officers liable in the same way as Officers.

Not only individual officers, but also bodies of officers are severally and jointly liable for an excess of authority which produces injury. Thus the members of a Court-Martial may, all or any of them, be sued for an illegal or unjust sentence upon a prisoner; and even the persons employed in the execution of the sentence are liable with them.

Thus, in an action against the president of a Court-Martial, for imprisoning the plaintiff upon an alleged charge of subornation of perjury which the plaintiff was supposed to have been guilty of, this being beyond the authority of the president, the plaintiff obtained a verdict of £300, which was never set aside.†

* T. R. p. 539. † Moore *v.* Bastard, 4 Taunt. p. 70.

Another action was brought against the officers of the Devon Militia for inflicting 1000 lashes on the plaintiff, in consequence of the sentence of a Court-Martial awarding that punishment upon a charge of mutiny; the only mutinous act being that the plaintiff wrote a letter to the colonel, which was not communicated to any one else, telling him that the men of the regiment were discontented. The jury gave five or six hundred pounds damages.*

Bringing a brother Officer to a Court-Martial.

There is however one course of oppression, which may in its operation be very injurious, to which the courts have refused the remedy of an action; and that is bringing a brother officer to a Court-Martial without a probable cause. The question arose in the year 1786, when Admiral Johnstone, after the action of Port Praga Bay in the Island of St. Jago, accused Captain Evelyn Sutton, of the *Isis*, before a Court-Martial, for disobedience in not cutting his cables according to signal and putting to sea after the French squadron, and in falling astern and not keeping up in the line of battle. Captain Sutton was acquitted, and afterwards brought an action against Admiral Johnstone for a legal prosecution without probable cause. A great and important case was then brought into judgment for the first time, whether such an action could lie.†

The occasion had often arisen at different periods of time, when men of the fleets, put upon their trial before a Court-Martial, have thought the charge without a probable cause, and have keenly felt the iniquity of such an act of malice or oppression; yet, till this experiment, it never entered into any man's head, that such an action as this could be brought; consequently there was no usage, precedent, or authority in

* 4 Taunt. p. 71.

† Reasons of Lords Mansfield and Loughborough.

support of it: the case stood upon its own special grounds. The decision of the judges was as follows:

"A Commander-in-Chief has a discretionary power, by the military code (of the navy) to arrest, suspend, and put any man of the fleet upon his trial. A Court-Martial can alone judge of the charge. A military tribunal is capable of feeling all the circumstances, and understanding that the first, second, and third part of a soldier, is obedience. But what (it is remarked), will be the condition of a commander, if, on exercising his authority, he is liable to be tried by a common law judicature. If such were the case, every acquittal before a Court-Martial would produce an action. Not knowing the law, or the rules of evidence, no commander or superior officer will dare to act; their inferiors will threaten and insult them. Upon an unsuccessful battle, there are mutual recriminations, mutual charges, and mutual trials. The whole fleet or army take sides with great animosity. Party prejudices mix. If every trial by Court-Martial is to be followed by an action, it is easy to see how endless the confusion, how infinite the mischief will be."*

Bonâ fide employments of Authority.

Keeping in mind that it is only an abuse of power that creates civil liability, no officer need be under apprehension of an action for a *bonâ fide* employment of his discretionary power, however apparently harsh its consequences may be; more especially so if its exercise is in accordance with the custom of the service, or in the course of actual service in the field. Thus for example, where a young midshipman who had been mast-headed by the orders of his superior officer, refused to go aloft to undergo his punishment, and was forcibly taken aloft by the direction of the commander, it

* Johnstone v. Sutton; Opinion of Lords Mansfield and Loughborough; 1 T. R. p. 544.

was held not to be an assault, on the ground that it was the exercise of an authority in accordance with the custom of the service.* Again, where a serjeant, after a battle, neglected to obey an order regarding deserters, and was tried by a Court-Martial, who thought suspension for a month a sufficient punishment for his offence, but was afterwards, by the order of his commanding officer, broke and reduced to the ranks, it was held not to be a corrupt or malicious abuse of authority; for the officer had, by the constant custom and practice of the army, the power to make serjeants, and to break and reduce them when he deemed them to have misbehaved; and, in the absence of other evidence, there was nothing to show that he had acted maliciously because he differed in opinion from the Court-Martial.†

Censures of a Court-martial not libellous.

It is not an excess or abuse of the authority of a Court-Martial to pass censure on persons before it, with reference to the subject matter of the enquiry.

In order to enable a Court-Martial to decide upon the charges submitted by the Crown they must hear all the evidence, as well on the part of the prosecution as of the defence, and after hearing both sides, they are to declare their opinion whether there are any grounds for the charges. If it appears that the charges are absolutely without foundation, the president of the Court is not bound to remain perfectly silent on the conduct of the prosecutor; and the law does not regard it such an offence in him, (to state that the charge is groundless and malicious) as to be the foundation of an action of libel. Such words do in fact form part of the judgment of acquittal.‡

* McArthur on Courts-Martial.

† Barwis *v.* Keppel, 2 Wilson, p. 314.

‡ Tekyll *v.* Moore, 5 B. and P. 341.

In a subsequent case, the Court of King's Bench went a step further in the protection of officers in the performance of a necessary duty. In consequence of certain transactions or suspicions derogatory to the character of Captain Home of the Foot-guards, the Duke of York, as Commander-in-Chief (1820), gave a direction that a Court of Inquiry should be held for the purpose of obtaining information as to the conduct of that officer. A report was made by Major-General Bentinck (who was president of the court) in conjunction and connection with the other members. On the ground of this report Captain Home brought an action of libel against General Bentinck.

At the trial, Chief Justice Abbott would not allow this report to be read in evidence; and the court subsequently upheld his opinion, on the ground of public policy and convenience, that these matters, secret in their natures and involving delicate enquiry, and the names of persons, stand protected; and also on the ground that the report was a confidential communication, in consequence of a direction by the Commander-in-Chief, for the information of his own conscience in the exercise of his public duty, as to whether he should suffer Captain Home to continue an officer or not. This attempt to make the president of a court of enquiry liable in a court of law for his report, consequently failed. The Captain lost his cause.*

A Colonel in the service of the East India Company tried to make the Governor-General liable as for a libel, for publishing the dismissal of the colonel from the service of the company, and assigning as the reason, that it was for a gross breach of trust reposed in him as commanding officer of the Malacca Islands. The object probably was to try and publish, by means of a jury, the circumstances of this gentleman's

* Home *v.* Bentinck, 2 Bro. and B. p. 130.

misconduct. But the court held that the assignment of a reason for the dismissal, so far from being a libel, was an act of justice to the officer himself, and had nothing of the malicious character of a libel about it.*

Bonâ fide complaints to superior Authorities not libellous.

In a similar manner, letters written *bonâ fide* to the proper officer to obtain redress, are protected as a privileged communication. Thus, a petition in the form of a letter addressed to the Secretary-at-War, delivered to him and to him only, with an intent to prevail on him to exert his authority to compel the petitioner's debtor (an officer in the army) to pay his debt, was held not to be a libel.† And so a letter addressed to General Willes and the four principal officers of the Guards, to be by them presented to the King, stating that an officer in the army had obtained a warrant for the payment of money due to him from government under a promise of paying the writer such money, and that the officer had received the money and had not paid it over to the writer, was held to be no libel, but a representation of an injury, drawn up in a proper way for redress. In the celebrated case of Captain Bayley, Lord Mansfield intimated an opinion, that an address to the Governors of Greenwich Hospital, which had been delivered to the Governors *only*, for the purpose of calling their attention to abuses supposed to exist in the Hospital, was not a libel.

Endeavours to obtain redress are protected from the stain of libel, in order that men may not be prevented by the dread of a prosecution or an action from making communications that may be important to themselves, or beneficial to the public. This privilege, however, must not be abused; for if such a communication be made maliciously, and with-

* Oliver *v.* Bentinck, 3 Taunt. 539.

† Fairman *v.* Ives, 5 B. and Ald. 646.

out probable cause, or is false within the knowledge of the writer, the pretence under which it is made, instead of furnishing a defence to the writer,* will aggravate the case against him.

Complaint must be made to the proper Authority.

It is a principal point in this protection also, that the complaint must be made to the proper authority. Thus, it was not held to extend to an officer in the navy, who wrote a letter to Lloyd's complaining of the captain of his ship. He had no right to make that communication to Lloyd's, but only to the government by whom he was employed.†

Remedy against a superior Authority for refusing to hold a Court-martial.

Refusing and neglecting to hold a Court-Martial for the trial of a subordinate officer, when it is in the power of the superior to do so, and instead, keeping the offender in arrest an unreasonable time, is actionable. Every breach of a public duty, working wrong and loss to another, is an injury, and actionable. Although it is true that beyond three years after the offence no Court-Martial can be held; yet it is consistent with that, that it may be the duty of those who have power to hold Courts-Martial to hold them within a shorter space of time. Suspension and arrest being incident to the power to hold a Court-Martial, it is absolutely necessary, to qualify the rigour of it, that it should be executed in a reasonable time; otherwise a power of holding a Court-Martial would necessarily involve in it a power to imprison for three years previous to the trial; which could not be borne.‡ It is a familiar qualification of powers that they should be executed in a reasonable time.

Injuries by Military Men to Civilians.

It frequently happens that, in the course of military and naval operations, an officer undesignedly produces injury to

* Fairman *v.* Ives, ibid. 648.

† Harwood *v.* Green, 3 C. and P. 143.

‡ Sutton *v.* Johnstone, 1 T. R. 509.

non-military persons, who are either subjects of his Sovran, or are persons in amity with this country. A question immediately arises, what liability is he under to make restitution for the injury done them? Of course he is not in any way liable to enemies, for he is bound by the Laws of War to do the enemy all the injury in his power, consistent with the modern humanity of war, and the honour of his country.

With respect to fellow subjects, or friendly powers, he is bound to act, as it is termed, *bonâ fide*, with no malicious intent. If it can be made out that he acts *malâ fide*, he will be liable to an action; but in order to support an action for an injury done by a person filling a public office, such as an officer on a public expedition fills, it is essential that it can be shown that he has acted *malâ fide*. His character as a public officer places him in a different position from that in which other individuals would stand.*

What is Bad Faith in the Execution of Duty.

What then is *malâ fides* in the conduct of an operation by an officer? This must generally be determined by the circumstances of each case; but a few general illustrations can be given. An undue assumption or even mistaken exercise of authority, where the officer has an express code, such as the Mutiny Act and the Queen's Regulations, to guide him, will be *malâ fides*, that renders him liable to make restitution for an injury done by him to a civilian. For example, improperly billeting the men of his company, and forcing persons not liable to receive billets to take them, and to supply the usual quantities of meat, drink, hay, and straw, for the soldier or his horse; † the laws of billet being clearly pointed out by the Mutiny Act. Also where Captain Gam-

* Forbes *v.* Cochrane, 2 B. and C. 448.

† Parkhurst *v.* Forster, 1 Ld. Ragan, 479.

bier, under the orders of his Admiral, Boscawen, pulled down the houses of some sutlers on the coast of Nova Scotia, who supplied the seamen of the fleet with spirits. The act was done with a good intention on the part of the Admiral, for the health of his sailors, who had been affected by frequenting these houses. Here was an improper assumption of authority by the Admiral, and one of the injured parties brought an action and recovered £1,000 damages. Similarly, a successful action was maintained against Sir Hugh Palliser for destroying fishing huts on the Labrador Coasts. After the treaty of Paris, the Canadians, early in the season, erected huts for fishing, and by such means obtained an advantage over the fishermen who came from England. It was a nice question upon the rights of the Canadian. The Admiral, on the grounds of public policy, ordered the huts to be destroyed. But it was an excess of authority. The case ended in arbitration: the right of action however was never disputed.* Similarly, bringing to trial and confirming the sentence of a Court-Martial on a person *not liable to military law*, is an assumption of authority, giving a remedy by action to the injured party.† Similarly, making a *military* arrest of a person not under military law, is a mistake of authority amounting to *malâ fides*, for which an officer is liable to answer, if it has been productive of injury to the captured person.‡

In 1831, Mr. Glynn, a British merchant, was residing at Gibraltar, of which fortress Sir William Houston was Lieutenant-Governor, acting as Governor. On the 3rd of November of that year, early in the day, Colonel Mair, the Military Secretary to the Governor, surrounded Mr. Glynn's premises with troops, and searched a house immediately

* Cowper's Rep. pp. 180, 181.

† Ibid, p. 175.

‡ Gore *v.* Smith, Strange's Madras Rep. p. 435.

adjoining, for the Spanish General Torrijos, who was suspected to be secreted there. During the search, which was unsuccessful, Mr. Glynn, on attempting to leave his house, was prevented from doing so by a sentinel with a fixed bayonet. Under these circumstances, and upon these facts, Mr. Glynn brought an action against General Houston, and the jury, under the direction of Mr. Justice Erskine, found a verdict for Mr. Glynn, with £50 damages.*

The case of Sutherland *v.* Murray is very strong to show that a person representing the King in all his functions, civil and military, where the act complained of is *expressly legal*, shall answer for an *abuse* of his authority. In that case the defendant was the Governor of Minorca, and Vice-Admiral of the Island; the plaintiff was Judge of the Vice-Admiralty Court. General Murray had legal authority to suspend until the King's pleasure was known; and he had wrongfully suspended Sutherland, and having made a malicious and false representation to the Secretary of State, directed him to take the King's pleasure upon it. The General professed himself ready to restore him on a particular apology; the King approved of the suspension, unless the terms were complied with. The plaintiff recovered £5000, and it never occurred to any lawyer that there was any pretence to move in arrest of judgment. The gist of the action was admitting the legality of the suspension thus confirmed, but complaining of the defendant's exercise of his original authority, and his malicious and false representation, by which the suspension had been confirmed.†

Negligence and unskilfulness in the exercise of an officer's authority, is also a cause of action, if injury results to private persons.

Negligence and Want of Skill in Execution of Duty.

* Glyn *v.* Houston, 2 M. and G. p. 337.

† Sutherland *v.* Murray, 1 T. R. 538.

Superior Officer not liable for independent acts of inferior Officers under his command.

Attempts have been made to carry still further an officer's liability to answer for injury to private individuals, by endeavours to make the superior officer liable in damages for the misconduct or negligence of the numerous persons under his command, *whom he does not appoint.* An analogy was drawn to the principle upon which masters are liable for the acts of servants or workmen in their employ; but that principle rests on the fact that servants are *appointed* by their masters, and the latter must take care to employ persons of competent skill and due diligence in the business done by them; and though this has been extended to a steward or agent, who was entrusted with the power of appointing and dismissing such servants, yet that was upon the same principle, because the appointment was made as the agent or servant of the master. But the superior officer has no power to put in or to put out his subordinates: he has no power to appoint even himself to the station he fills; and there is no reason for making one man liable for the act of another whom he does not employ. The application of such a rule to superior officers would work great injustice, and, by releasing the inferiors from the consequences of their own acts, be highly detrimental to the Queen's service.

If, however, the superior has given express and specific orders as to the mode of performing an otherwise discretionary duty, this is a personal interference of the higher officer with the acts of the other which occasioned the damage, and then, if the orders were wrong, the responsibility would lie with the officer giving the command.*

Injuries committed on fellow-subjects in foreign jurisdictions.

A question was once raised whether an injury done in a foreign country by one subject to another, under a foreign jurisdiction, could be the subject of an action. According

* Nicholson *v.* Mouncey, 15 East. 384.

to Lord Mansfield "it cannot be doubted that actions may be maintained here not only upon contracts, which follow the persons, but for injuries done by subject to subject."* The case cited was an action for assault and false imprisonment by a native Minorquin against General Mostyn, the English Governor of Minorca; the injury having been committed on the Minorquin, who was at that time an English subject in Minorca.

The liability even of sovereign princes to be sued in the courts of foreign countries has lately undergone a full discussion in a very remarkable case of the Duke of Brunswick *v.* the King of Hanover,† where the defendant was at once king of one country and a subject of that in which he was sued. Lord Langdale, in a judgment that exhausts the subject, stated his opinion: that the King of Hanover was exempt from all liability of being sued in the courts of this country for any acts done by him as King of Hanover, or in his character of Sovran Prince; but that, being a subject of the Queen, he was liable to be sued in the courts of this country in respect of any acts and transactions done by him, or in which he may have been engaged, as such subject.

Soldiers, &c., not liable for hostile acts done under command.

On the same principle which exempts Sovrans from liability to be sued in respect of acts of state, seems to rest the immunity of a soldier against actions by foreigners for acts done by him in a *hostile* manner, in the name of the government to which he belongs: provided those acts be either authorized by an actual command, or ratified by a subsequent approval of the government. For an inquiry so

* Fabrigas *v.* Mostyn, 2 Cowper, 161.

† 6 Beavan, p 1.

inflicted (if redress be denied by the government) there is no remedy but an appeal to arms.*

Case of the Slave Trade.

Hostility can be legally exercised towards enemies under all circumstances, and towards neutral or friendly nations acting contrary to the known law of nations. From this has arisen the question whether this country is justified in attempting to put down the slave-trade by force of arms. It is impossible to say that the slave-trade is contrary to what may be called the known law of nations. Until lately it was carried on by all the nations of Europe; and a practice so sanctioned can only be rendered illegal by the consent of all the powers. Most of the Christian states have now consented to an abolition of the slave-trade, and concurred with this country in declaring it to be unjust and inhuman. The subjects of these states could not maintain an action in the Courts of this country, for any injury happening to them in the prosecution of this trade. This then may be considered the rule: that ships which belong to countries that have prohibited the slave-trade are liable to capture and condemnation, if found employed in such trade; but that subjects of countries that permit the prosecution of the trade cannot be interrupted while carrying it on. These countries have only to look to their own municipal laws, and cannot be affected by any laws made by our government.

Approbation of the Crown no protection against Civil Actions.

There is yet one other point to be noticed with regard to civil wrongs, and this is, that the approbation of the Crown is no protection to the officer against proceedings at law for *malâ fides* in the execution of his duty; for if such were the case, the civil rights of the subject would be at the

* 1 Smith's Leading Cases, p. 368, 3rd Ed.

mercy of the Crown. This we have seen exemplified in the case of General Murray, where the King's approbation did not save him from a verdict of £5000.*

No Liability on Contracts made for the Public Service.

When it falls to the duty of an officer to make contracts for the supply of stores, provisions, or any other public purpose, he is not *personally* liable to pay for them; the creditor must in general look to the Government. Great inconveniences would result from considering a governor or commanding officer as personally responsible in cases where he contracts as an agent for the public; few would accept any office of trust under Government on such conditions. And indeed it has frequently been determined that no individual is answerable for any engagements he may enter into on that behalf. In a case in which a person of the name of Savage brought an action against Lord North, as First Lord of the Treasury, in order that he might be re-imbursed the expenses which he had incurred in raising a regiment for the service of the Government, Lord Mansfield held that the action would not lie.† So in another case of Luttertob *v.* Halsey, which was an action brought against a commissary for the supply of forage for the army, and by whom the plaintiff had been employed in that service; the commissary was held not liable.‡

Thus also the governor of a fort or of a colony is not personally answerable for stores ordered by him for the use of Government; neither is the captain of a troop liable for forage supplied to the army or the troop, nor for provisions furnished to the men. In a similar manner the Secretary-at-War was held not to be liable to a retired clerk of the

* *Supra*, page 157.
† 1 Term Rep. p. 180.
‡ Idem.

War-Office for his retired allowance, though such allowance was included in the yearly estimates drawn for by the Secretary, who is the agent and officer of the Crown for the due execution of the trust committed to him.*

At the same time it must be remembered that a person acting in a public situation under Government, may by his own conduct make himself personally liable for contracts, for which, from the nature of his office, he would not otherwise be liable; but the party suing the officer is then bound to make out a very strong case, in order to induce the Court to believe that such was the agreement. As if, for example, a person residing at a distance were absolutely to refuse to treat with the Government, but chose rather to rely upon the personal security of the Government officer contracting, who might be on the spot and willing to treat, and should treat upon such conditions, then the officer would be personally liable. In these great questions of policy, the Courts do not argue from the nature of private agreements: but even in these cases, the question must be, what is the meaning of the parties at the time of entering into the contract?†

Neither does a superior officer become liable for the pay due to an officer over whose appointment he has some control; thus the consent of the captain of a ship is necessary to the appointment of the purser's steward. He is then *entitled* only to the pay of an able seaman, but usually receives pay under a private contract from the purser. It is also usual for the purser to select his own steward, and to pay him at the rate of one pound per gun; but it was held that in the absence of a *specific* contract, the steward cannot recover

* Addison on Contracts; citing 1 T. R. 180; 1 East. 579—135; 7 Moore, 91.

† Macheath v. Haldimand, 1 Term R. 172.

wages from the purser under the *implied* contract for his services on board ship.*

Nor is the superior officer rendered liable, in contracting for the public, by orders given to a subordinate agent appointed by himself. Thus, if a captain of a detachment charges a serjeant with the duty of providing subsistence for the detached party, he is not liable to the tradesmen supplying the goods and provisions; for the serjeant is not the agent of any private individual, but of whatever officer may happen to be in command of the party: *i.e.* of the public.†

The Courts, in deciding the question of an officer's liability for contracts made for the public, will always look narrowly at the surrounding circumstances; especially in cases where there has been such conduct on the part of the officer as to suggest a private liability. Thus, First-Lieutenant Temple, of the Boyne, arriving at Portsmouth, inquired for a slop-seller to supply clothes for his crew, saying, "he will run no risk, I will see him paid." On one, (Keate) being introduced to him, he said "I will see you paid at the *pay-table*; are you satisfied?" Keate answered, "Perfectly so." Soon after the slops were supplied the Boyne was burnt, and the crew were then paid off. Many of the crew had objected to the new supply of clothes, and the purchases had in fact been compulsory. Lieutenant Temple stood at the pay-table and took some money out of the hat of the first man who was paid, and gave it to the slop-seller. The next man, on the contrary, refused to part with his pay, and was immediately put in irons. The rest of the crew, however, followed the example of the second man in refusing to pay. Keate, being thus unable to obtain the price of his slops, brought an action for

* Carter; 2 Stark, 361.

† Myrtle *v.* Beaver, 1 East. 139.

his money against Lieutenant Temple. A verdict was obtained against him, but the Court set it aside, "saying, the sum recovered is so large that it goes a great way in satisfying our mind that it never could have been in contemplation of the defendant to make himself liable, or of the slop-seller to furnish the goods, on his credit. From the nature of the case it is apparent, that the men were to pay in the first instance; and the meaning of the words was, that however unwilling the men might be to pay of themselves the officer would take care that they should."*

Duties when aiding the Civil Power.

There are few occasions on which an officer is likely to be more embarrassed than when called upon by the proper civil authority, or others, to aid, or to be the principal instrument, by means of the force under his command, in suppressing riots and tumultuous assemblies. Undoubtedly on such occasions, if he acts against the law, the consequences to himself may be serious.

Any person, whether a magistrate or a military officer, who has the duty of suppressing a riot, is placed in a very difficult position; for if, by his acts, he causes death, he is liable to be indicted for murder, or manslaughter; and if he does not act he is liable to be indicted, if a civilian, or tried by a Court-Martial, if a soldier, for neglect of duty; yet, difficult as it may be to hit the precise line of duty, he is still bound to do so.†

With regard to neglect, he is safe if he does all that he knows is in his power, and which may be expected from a man of ordinary prudence, firmness, and activity, to do. He must use all those means which the law requires him to use, and which an honest man ought to do by his own personal exertions. It will be well for him to act (if possible) under

* Keate *v.* Temple, 1 B. and P. 158.
† 5 Car & P. 270.

proper legal and military advice: not that, if he acts *contrary to law*, it will be sufficient to shelter him that he acted under the advice of others; still less will it guard him as to matters not within the scope of the advice.*

Riots.

The law of England has, in proportion to the danger which it attaches to riotous and disorderly meetings of the people, made ample provision for preventing such offences, and for the prompt and effectual suppression of them, whenever they arise. By the common law, every private person may lawfully endeavour, of his own authority, and without any warrant or sanction of the magistrate, to suppress a riot by every means in his power. He may disperse, or assist in dispersing, those who are assembled: he may stay those who are engaged in it from executing their purpose: he may stop and prevent others whom he shall see coming up, from joining the rest; and not only has he authority to do so, but it is his bounden duty, as a good subject to the Queen, to perform this to the utmost of his ability. If the riot be general and dangerous, he may arm himself against the evil-doers to keep the peace; though of course it is more discreet for every one in such a case to attend and be assistant to the justices, sheriffs, or other ministers of the Queen in doing this.† But if the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of the magistrate, it is the duty of every subject to act for himself and upon his own responsibility, in suppressing a riotous and tumultuous assembly; and he may be assured that whatever is *honestly* done by him in the execution of that object will be supported and justified by the common law.‡

* 5 Car. & P. 270. † The Case of Arms—Coke's Reports, p. 121.
‡ Rex v. Kennett, 5 Car. and P. p. 262, note.

The law in this respect makes no distinction between the soldier and the private individual. It is a strange mistaken notion to suppose that men who become soldiers cease to be citizens; a soldier is gifted with all the rights of other citizens, and is bound to all their duties, and it is as much his duty to prevent a breach of the peace or a felony, as it is that of any other fellow-subject. In Lord George Gordon's riots in 1780, this mistake of a soldier's position extended to an alarming degree; soldiers with arms in their hands stood by and saw felonies committed, houses burned and pulled down before their eyes, by persons whom they might lawfully have put to death, if they could not otherwise prevent them; some did not interfere, because they had no commanding officer to give them the command, and others because they had no justice of the peace with them.

This is the more extraordinary, because formerly the *posse comitatus*, which was the power to prevent felonies, must, in a great proportion, have consisted of military tenants, who held lands by tenure of military service. If it be necessary for the purpose of preventing mischief, or for the execution of the law, it is not only the right of soldiers, but it is their duty to assist in the execution of a legal process, or to prevent any crime or mischief being committed. It is therefore highly important that it should not be supposed that an Englishman, by taking upon himself the character of a soldier, puts off the rights and duties of an Englishman.*

Undoubtedly, the same exercise of discretion which requires the private subject to act in subordination to, and in aid of the magistrate, rather than upon his own authority, before recourse is had to arms, ought to operate in a still stronger degree with a military force. But, where the danger is pressing and immediate, where a felony has actually been

* Burdett *v.* Abbott, 4 Taunt. 448.

committed or cannot otherwise be prevented, and from the circumstances of the case no opportunity is offered of obtaining a requisition from the proper authorities, the military subjects of the Queen, like her civil subjects, not only may but are bound to do their utmost, *of their own authority*, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people.*

It is generally supposed that the reading of the Riot Act is the moment when the military first become entitled to act; but this is an error.

The common law and several statutes have invested justices of the peace with great powers to quell riots, which, if not suppressed, tend to endanger the constitution of the country; and as they may assemble all the Queen's subjects, it is clear they may call in the soldiers, who are subjects, and may act as such; but this should be done with great caution. It is well understood that magistrates may call in the military. It would be a strange doctrine if, in the case of an insurrection, every subject had not a power to act, when they possess the power to do so in a case of a mere breach of the peace.

A riot is not the less a riot, nor an illegal meeting the less an illegal meeting, because the proclamation of the Riot Act has not been read. The effect of that proclamation is to make the parties guilty of a capital offence if they do not disperse within an hour; but if that proclamation be not read, the common law-offence remains, and it is a misdemeanour; and all magistrates, constables, and even private individuals, are justified in dispersing the offenders; and if they cannot otherwise succeed in doing so, they may use force.†

* Burdett *v.* Abbott, 4 Taunt. 448.

† Rex *v.* Fursey, 6 Car. and P. Rep. p. 81.

By the Riot Act, a particular direction is given to every justice for his conduct; he is required to read the Act, and the consequences are explained. It is a step *in terrorem*, and of gentleness; and it is not made a necessary step, as he may instantly repel force by force. If the insurgents are not *doing* any act, the reading of the proclamation acts as a notice. There never was a riot without by-standers, who generally go off on the reading of the Act.

Lord Erskine said in his defence of Kennett, the Lord Mayor of London, in the riots of 1780:—"That the Riot Act was made upon the elevation of the House of Hanover to the throne, to prevent the disorders that might be occasioned by those who were enemies to that accession. He declared that the Act, though universally known, was not universally understood; he did not know any subject on which there was so universal an ignorance. Men of eminence in the profession of the law had entertained doubts upon the legality of calling in the military upon tumults; for, in times of tranquillity and order, men do not examine into their powers to suppress or prevent disorders which they do not foresee. He observed that persons did not want laws to inform them, that, when others are doing acts of felony, every man is bound by the laws of God and of civil society to oppose force, to suppress violence, and *that* without orders; the reading of the Riot Act in such a case is unnecessary. But that this was not so understood was manifest from the total ignorance on the subject in the most august assembly in the kingdom, where men were panic-struck on hearing the doctrine so laid down by the noble and learned lord, (Lord Mansfield), who was then trying the cause."*

It is equally a popular error, that to legalize the acts of the military, a justice of the peace is bound to ride up and

* 5 Car. and P. 291.

charge with the military. The military officer *may* act without any magistrate; but no prudent military man would do so, because his acting may be attended with the loss of life; though if a magistrate gives him an order to act, that is sufficient. If the law were otherwise, great inconvenience might ensue; for if it were necessary to ride with the troops when they charged, the magistrate must remain with them when he might be wanted elsewhere. To ride with the military, you must ride as they do; and if a magistrate were to ride with soldiers in a cavalry charge, he would not only be in danger of being unhorsed, but he would also be most probably singled out by the rioters and destroyed.*

The following is a summary of the Queen's Regulations respecting riots. "The officer is to explain to the people that if the troops fire, the fire will be effective; the officer is to *go out* only on the requisition of a magistrate, in writing; to move to the place indicated by the magistrate; the officer to remain near the magistrate, and to give all orders given to troops; the troops to fire only on the word of command of the officer; and the officer to give that word only when distinctly required by the magistrate; the firing to cease directly it is no longer necessary, whether the magistrate order it or not; care to be taken not to fire upon persons separated from the crowd, and not over the heads of the rioters; but at the same time the officer, in all respects, is to exercise a humane discretion."†

* Rex *v.* Pinney, 5 Car. and P. 278.

† Queen's Regulations 1844; 207–210.

Section X.

Pay, Maintenance, Prize, &c.

Full Pay. The Pay of the officers and soldiers of the British Army is granted and regulated by numerous Acts of Parliament, warrants, orders, &c.; but is subject to a few simple rules. A regimental officer is entitled to receive, on the first day of each month, his pay from that day to the last day of the month; so that it is, in fact, payable in advance, and stops only when he is absent without leave, or if he fails when newly appointed to join within two months of the date of his appointment.

When officers are on service with their regiments, in India, they are allowed to remit a portion of their pay, for the benefit of their parents, wives, children, brothers, or sisters, through the local government; the officer cannot, however, part with his pay by anticipation, in any other way, except when obliged to draw on his agent for regimental purposes, as his pay is intended to keep him efficient for the Queen's service, as well to reward him. Thus, in general, the full-pay and half-pay of officers cannot be assigned away; for it is contrary to the policy of the law, that a stipend given to one man, for future services, should be transferred to another who cannot perform them.*

Full and Half-Pay not Assignable.

* Barwick *v.* Reade, 1 H. Bl.

"Emoluments of this sort are granted for the dignity of the state, and for the decent support of those persons who are engaged in the service of it. It would, therefore, be highly impolitic to permit them to be assigned; for persons who are liable to be called out in the service of the country ought not to be taken from a state of poverty."

And more particularly with respect to half-pay. The officer has no certain interest in his half-pay: the Queen may strike him off the list; although there never has been an instance of revocation, except on reasonable grounds. Assignments of half-pay have been frequently made in fact, but they cannot be supported in law. A British officer, on half-pay, continues under all the responsibilities of a soldier; he is liable to be at any time called into active service; and therefore, public policy requires that he should be in a state of continual readiness and present capacity for service.*

Similarly, an *irrevocable* power of attorney to receive an officer's pay—which, if given for any consideration, would be another method of assigning it at law—could be at any time revoked.†

What officers are entitled to Half-Pay.

Half-pay is a reduced allowance or compensation granted to officers by the Crown, under the authority of parliament, either on a reduction of the forces rendering it unnecessary to retain their services, or upon their retiring from the active duties of the military profession. A full-pay service of three years is indispensable to entitle an officer to the privilege of

* Flarty *v.* Odlum, 3 T. R., 681; Littledale *v.* Duke of Montrose, 4 T. R. 250; Macdonald *v.* Shale, 2 Peake; Gibson *v.* East India Company, 8 Scott, 74.

† Stone *v.* Lidderdale, 2 Anstruther, 533.

half-pay.* Half-pay is in the form of a retaining-fee, granted for the express purpose of securing the future *military* services of the recipient, so that if he takes upon himself a position that would preclude him from again serving, he would lose his claim to half-pay. As for example, if he becomes a clergyman, he is no longer entitled to draw half-pay; but entrance to the other learned professions does not preclude him.

Foreign officers in British service, on the reduction of their corps, or the expiration of their term of service, and also officers of the line serving in the militia as lieutenant, ensign, adjutant, clerk, quarter-master, or surgeon, are entitled to their military half-pay.†

Regimental Agents.

Every regiment in the army has its own Agent, selected by the colonel for the time being, to receive the pay, prize-money, and other allowances, of all the officers and men of the corps. It is not properly an appointment by the colonel, but a common power of attorney, passed between the parties, by which the colonel constitutes the other his agent, empowering him to ask, demand, and receive all sums of money of whatever kind which may be due to him.‡ With respect to the agent's responsibilities, inasmuch as he is appointed by the colonel, it has been deemed reasonable by the legislature that the colonel should continue responsible for the agent's conduct, and for failure or deficiency on his part; but if money is imprest by the crown into the hands of an army agent, for the purpose of being paid to officers to whom it is

* Retirement on half-pay, with the difference, involves forfeiture of all claim to future rank or employment, pensions for widows, and compassionate allowance for children. Stocqueler's British Officer, 223.

† 55 Geo. III. c. 126; 42 Geo. III. c. 90.

‡ Knowles v. Maitland, 4 B. and C. p. 179.

due, and it is never demanded by them and therefore is not paid by the agent, it remains the money of the crown in the hands of the agent, for which the agent is accountable to the crown.*

Though the Agent is appointed by the colonel, he is recognized in all that he does, as a servant of the public. When money is wanted for the disbursements of the regiment, it is the agent, and not the colonel, who applies to the War Office; on this application the Secretary-at-War issues an order to the pay-master of the forces, who makes the payment to the agent, and takes the agent's receipt. There is an annual settlement of accounts between the agent and the pay-master; and the balance is paid to or received by the agent, as the case may be. In these transactions the colonel in no way interferes. The agent is treated as the person immediately accountable.† Agent a Public Servant.

The legislature, as we have shown, considers the colonel as the person to whom the public have a right to look, in the first instance; but on reference to the several Acts of Parliament, it will be found that the agent also is made answerable not only to the public but to the different persons in the regiment, for that portion of the money received by him as agent, which ought to be distributed to those different persons. As between the public and the agent, and as between the individuals of the regiment and the agent, the agent is to be considered the agent of the regiment and for the individuals; the agent is answerable both to the public and to the individuals of the regiment, for the sums which from time to time he receives.‡

* Antrobus *v.* Davidson, 3 Merivale, p. 569.

† Antrobus *v.* Davidson.

‡ Knowles *v.* Maitland.

It is customary for the colonel to take from the agent the bonds of himself, and one or more sureties, as a security for the right execution of the duties of his office; or, as a more effectual security, a sum of money or a portion of stock is deposited, according to the suggestion of the General Order of King George III, in 1790.*

Penalties on Regimental Agents.

In order to enforce a prompt observance of the rules and orders for the due appropriation of the public funds applicable to army services, and in order that a true and regular account may be kept and rendered by the agents for the several corps, the agents are required to observe such orders as are from time given by Her Majesty under her sign manual, or by the Secretary-at-War, or by Her Majesty's chief governor or governors of Ireland, or by the Lord Treasurer, or Commissioners of Her Majesty's Treasury. Any one being, or having been an agent, refusing and neglecting to comply with such orders in relation to his duty as agent, or unlawfully witholding or detaining any pay of any officer or soldier after the space of one month from the receipt thereof, is liable for the first offence to forfeit one hundred pounds; and if still an agent, for the second offence to be discharged from his employment, and be disabled from ever acting again as an army agent; or if he has ceased to be an agent, to forfeit one hundred pounds for every offence.†

The full-pay of officers in the army is not subject to any deduction for agency, that charge being provided for out of the annual army estimates provided by Parliament. Half-pay and allowances, however, when received through army agents, are subject to the deduction of two and a half per cent., or six pence in the pound, for agency; officers, their representatives, and widows, may however escape

* Prendergast, 73. † Mutiny Act, 1853, sec. 83.

all deductions arising from the intervention of agents, by drawing bills for half-pay and pensions on the paymaster-general of the forces.*

Pay, half-pay, and allowances, are subject to income tax; and the amount is stopped by Government out of the funds in the hands of the Paymaster-general.† Income Tax.

A very important question, both to agents and officers, at present seems to be undecided. The agent renders an account to the officer of his pay and allowances, in accordance, as the agent believes, with the directions of the various acts and general orders regulating those emoluments; but the agent may be in error, and by his account induce the officer to draw more than is legally due to him. The question is, can the agent recover back the surplus? In the case of Skyving *v.* Greenwood & Co., where the question arose; the judges declined to decide whether the defendants, by reason of their character of pay-masters, were prevented, by the account they had rendered, from saying that there was a mistake in it; but did decide, that if the defendants, having not merely made an error in account, but having in that case been guilty of a breach of duty, that justice required they should not be permitted to recover back or retain by way of set-off, the money which they had once allowed to the plaintiff in his account. It is the duty of army agents to communicate to officers any instructions they receive from the proper authorities, respecting pay, &c., and if they give wrong credits after receiving such instructions, this remissness is not a mere error, but a breach of duty.‡

Pensions are grants from the Crown, made by royal Pensions.

* Prendergast, 68, citing 55 Geo. III. c. 131; 2 & 3 Wm. IV. c. 106.

† Ibid, citing 5 & 6 Vict. c. 35, sec. 146.

‡ Skyving *v.* Greenwood, 4 B. & C. p. 281.

warrant; the supplies being voted by parliament, they may at any time be withdrawn by the Sovran. They stand, therefore, on the same precarious footing as half-pay. Half-pay, as it has been mentioned, being intended by the state to provide decent maintenance for experienced officers, both as a reward for their past services, and to enable them to preserve such a situation that they may be always ready to return to actual service, materially differs from the general case of expectancies. These certainly may in equity be assigned, for by such an assignment no legal interest is thwarted. Thus, a pension is equally uncertain as half-pay; but as no *future* benefit is meant to arise to the state from granting it, a material distinction arises between them. In deciding on the nature of a public grant, the great object of public policy in making the grant is to be attended to. A pension, however, cannot be legally assigned.*

With respect to the pension and allowances and relief from Chelsea Hospital, all assignments, bargains, sales, orders, contracts, agreements, or securities whatsoever, for the transfer of such pension, &c., are to all intents null and void; with certain exceptions in the acts for the relief of the poor in England and Scotland.

This restriction of assignment applies to both out and in-pensioners, and also to persons entitled to any marine half-pay, or to any allowance from the compassionate fund, by any officer or officers, widow, or other person entitled thereto. The rule is the same, as to all similar dealings with the pay and allowances of petty officers and seamen.†

Allowances and Pensions by the East India Company.

The allowances made by the East India Company to retiring officers are in the nature of the half-pay given to

* Davis *v.* Duke of Marlborough, 1 Swanston, 74.

† 7 Geo. IV. c. 16, sec. 26; 10 Geo. IV. c. 26, sec. 3; 11 Geo. IV. c. 20, sec. 47.

officers retiring from the Queen's service. They were always intended and always have been considered in the nature of a personal gratuity, and have never been granted by deed, or in any form indicating that the Company mean to become absolutely and irrevocably liable to the payment of such allowances; the circumstance of the allowance never having been granted by deed shows that it never was treated on either side as a part of the contract of service between the Company and the soldiers. The grant is not so much for the benefit of the individual, as to ensure the general respectability of the service, by enabling an officer of rank to support his station in society: all the circumstances must be taken into consideration. The allowance is no part of the original engagement; when an officer retires he makes his request; the Company take it into consideration and a resolution in the officer's favour follows. The application and the resolution are almost of course; so that the resolution is in the nature of a general regulation affecting the whole of the army, not a separate contract with any individual officer. The officer has no saleable or assignable property in his retired allowance.*

Commissioned officers in the East India Company may also become entitled to pensions out of Lord Clive's Fund, which appears to have originated in his lordship's charitable appropriation of a legacy bequeathed to him by Meer Mahomed Jaffier Khan, the Nawaub of the Carnatic. The Directors hold this bequest in trust, to apply the interest to the support of European officers and soldiers who should become invalids or superannuated in the Company's service; and of their widows, and also the widows of such officers and soldiers as should die in the Company's service; but it is

* Morris *v.* Manesty, 7 Q. B. 674; Gibson *v.* East India Company; 5 Bing. N. C. 273 & 7, Scott R.

not applicable to the widow of an officer who married *after* his retirement from the service.*

Arrears of Pay and Pension cannot be recovered by action at law.

No action can be supported against any one to recover the arrears of pay and pension granted by the Crown: at least unless the money has been specifically appropriated by the government, and placed in the hands of the paymaster or agent, to the account of the particular officer; but when pay is once issued to an officer's agent or to a paymaster, to his use, his title to the money is complete, and cannot afterwards be questioned. On one occasion an officer's agent entered a *caveat* at the pay-office, against a half-pay officer, on the ground of his being indebted to him for a large amount; the officer thereupon commenced an action against the Paymaster-general to obtain his pay. Lord Kenyon ruled "that the *pay-office* could not stop the pay for a debt due to the agent. If the public,† had a demand against the officer, that might be set off against the action. But his Majesty's pleasure supersedes all enquiry, as he has the absolute direction and command of the army. Parliament provides a sum of money, but it is to be distributed as the King chooses; the money is under his control, until such time as it is *paid out.* The King cannot take it for his own use; but he may prevent it from being paid to a person who is not entitled to receive it. The *caveat* of a regimental agent is mere waste paper, until adopted by the Crown; when adopted, it becomes an act *of the Crown;* and it is for the honour of the Government to see that money due to an officer is applied to the payment of his debts."‡

* Prendergast, 75; M'Kenny *v.* East India Company, 3 Vesey, Jun., 203.

† That is, it is presumed, some official state demand, not of a private character.

‡ Gibbon *v.* East India Company; Macdonald *v.* Steele, Peake's Cases, p. 233.

If the paymaster-general or the treasurer of the navy has paid money erroneously, but in obedience to a court having authority over the subject matter of the claim, they can be called upon to pay the money again to the true claimant. As, for example, where arrears have been paid to a simulated executor, claiming under a *forged will*, that had been judicially, but erroneously received as genuine by an Ecclesiastical Court.*

The *billetting* of troops, in England and Ireland, is in the hands of the constables of parishes, who are required to billet in victualling houses, and other houses specified in the Mutiny Act,† the officers and soldiers in Her Majesty's service, and *persons receiving pay* in Her Majesty's army; also the horses belonging to Her Majesty's cavalry, all staff and field-officers' horses, and all bât and baggage-horses, belonging to any of the Queen's other forces, when on actual service, not exceeding, for each officer, the number for which forage is allowed by the Queen's Regulations. The constables in Ireland are to take care not to billet less than two men in one house, except only in case of billetting cavalry. Billets.

The persons billetted are to be received by the occupiers of the houses in which they are so allowed to be billetted, and are to be furnished by such victuallers with proper accommodation in the house; or if the victualler has not sufficient accommodation in the house in which a soldier is billetted, then in some good and sufficient quarters, to be provided by the victualler in the *immediate* neighbourhood; and in *England*, with diet and small beer, and with stables, hay, and straw, for the horses.

At no time when troops are on a march, are they to be

* M'Kenny *v.* East India Company, 3 Vesey.

† Vide sec. 68; Exemptions from Billets.

Billets. billetted above one mile from the place mentioned in the route. In all places where cavalry are billetted, the men and horses are to be billetted in one and the same house, except in case of necessity; and in every case whatsoever, there shall be one, at least, billetted where there are one or two horses, and two men where there are four horses, and so in proportion for a greater number; in no case are a man and his horses to be billetted more than one hundred yards from each other; the billets are to be made out, in a just and equal proportion, upon the keepers of houses within *one mile* of the place mentioned in the route. When the constable of an adjoining county is present, and undertakes to billet the due proportion of men in the adjoining county, the other constable is not to billet soldiers out of his county; otherwise he may, within the one mile. No more billets are at any time to be ordered than there are effective soldiers and horses to be billetted; and the billets, when made out by the constables, are to be delivered to the commanding officer present.

If any one finds himself aggrieved, by having an undue proportion billetted in his house, he can prefer his complaint before justices, to obtain the removal of the soldiers; if against a constable, before one or more justices; if against a justice, before two or more justices, within whose jurisdiction the soldiers are billetted.

If a person on whom cavalry or horses ought to be billetted, has no stables, then, upon the requisition of the commanding officer, the constable is required to billet the men and their horses, or the horses alone, on persons that have stables; and on these persons making complaint to two or more justices, the person relieved may be ordered to pay a proper allowance to the person receiving men and horses, or to be applied in furnishing the requisite accommodation.

Commanding officers may exchange any man or horse

billetted in any place, for another man or horse billetted in the same place, so that he does not increase the number on any individual house; and the constables must billet the men or horses so exchanged. Billets.

A justice, on the requisition of an officer commanding a party, may extend the route or enlarge the districts within which billets are required; but to prevent abuse, such a justice may, by warrant or order under his hand, require the constable in his jurisdiction to give him a complete account, in writing, of the billets.

In England, no one can be billetted in any private house, in any canteen of the ordnance department, upon any persons keeping taverns only, and free of the Vintner's Company in the City of London (notwithstanding they have taken out victualling licences), in the houses of any distiller, or any storekeeper dealing more in goods than strong waters, *so as such* distillers and storekeepers do not permit tippling in such houses; nor in the residence of any foreign consul.* Exemptions.

The guards are billetted in the city and liberties of Westminster, and places adjacent, lying in Middlesex, (except in the City of London,) in Surrey, and in Southwark, in the same manner and under the same regulations as in other parts of England. The order for billetting is sent to the high constable, who gives precepts to the constables within their respective divisions, to make the billets. The constables must also deliver, (upon oath,) lists of the billets to the justices assembled at quarter sessions, the list remaining with the clerks of the peace for public inspection. No justice being a military officer, can be directly or indirectly concerned in billetting soldiers under his immediate command. Billetting the Guards.

* Mutiny Act, 1854, sec. 68.

Billetting Troops on March.

When soldiers are on the march, innholders are required for every day of the march and on a halt not exceeding two days, and for the day of arrival at the place of final destination, to furnish every soldier with one hot meal in each day, (according to the Queen's Regulations,) and consisting of diet and small beer, not exceeding one pound and a quarter of meat, (previous to being dressed,) one pound of bread, one pound of potatoes or other vegetables, and two pints of small beer, with vinegar, salt, and pepper; for this, the innholder is to be paid ten-pence.

At other times the soldier is to be furnished with candles, vinegar, and salt; to be allowed the use of fire, and the necessary utensils for dressing and eating his food; for this the innholder is to be paid *one half-penny* a day for each soldier.

In England *nine pence* a day is paid for hay and straw for each horse; in Ireland, according to a rate established by the Lord-Lieutenant or some other proper authority, regulated by the average rate of contracts for forage in Ireland; and for the bare use of stables (in Ireland,) when the innholders do not supply the hay and straw, *four pence* a week is paid for each horse.

Every officer to whom it belongs, or who does actually receive the pay of any officers or soldiers, must, every four days, or before quitting quarters if they do not remain so long as four days, settle accounts with the victuallers out of the pay and subsistence, before any pay or subsistence is distributed to the officers or soldiers. If the officer does not settle in the manner appointed, two justices sitting in quarter or petty sessions, upon the complaint and oath of two witnesses, may be required to make out a certificate of the accounts due, &c.; and upon that certificate the Secretary-at-War is to order the regimental agent to pay the said sums, and charge it against the defaulting officer. If, in the case

of sudden orders to march, the commanding officer is not able to make such payments, his duty is to make up accounts with the persons to whom money is due on account of billets, and sign a certificate thereof; and upon transmission of the account and certificate to the regimental agent, he is required to pay it.*

In these regulations, justices are meant to include all classes of magistrates; and by victualling houses are meant inns, livery stables, ale-houses, houses of sellers by retail of wine to be drunk in their own houses, or on any place thereunto belonging, and all houses of persons selling brandy, strong waters, cider, or metheglin by retail, in England and Ireland; and in Ireland when there is not sufficient room in such houses, then the soldiers are billetted in such a manner as has been heretofore customary.†

Carriages for Troops.

The Mutiny Act also makes provision for the regular supply of carriages for the forces and their baggage, in their marches through Great Britain and Ireland. An order from Her Majesty, the general of her forces, the master-general, or lieutenant-general, or some properly authorized order is given to an officer, or non-commissioned officer of the regiment ordered to march; on the production of it, or of a copy certified by the commanding officer, a justice is required to issue his warrant to any constable of a place from, through, near, or to which the troop is ordered to march, ordering him to provide proper carriage. The warrant must be specific as to places, distance, and payment; and, except in cases of emergency, the daily distance to be travelled by the carriages, &c., is not to exceed the given days march in the route, and in no case to exceed twenty-five miles. The constable may then oblige such persons as

* Mutiny Act, 1854, sec. 71. † Ibid, sec. 72.

he thinks proper to furnish carriages. If there are not enough in one jurisdiction, by a similar proceeding any justice of an adjoining jurisdiction may supply the deficiency. However, to prevent injustice and inconvenience, any justice residing nearest to any given place may cause annual and descriptive lists of all persons liable to furnish carriages, and may, by warrant, authorize the constable within his jurisdiction to give orders to provide carriages. The constable then requires no special warrant, but must take the carriages as nearly as possible in rotation.*

In cases of emergency, not only waggons, wains, carts, and cars, kept and belonging to any persons for any use whatsoever, but also saddle-horses, coaches, post-chaises, chaises, and other four-wheeled carriages kept for hire, and also boats, barges, and any vessels used for the transport of commodities on any canal or navigable river, may be ordered to be furnished. In this case the order is from the Queen, or the lord-lieutenant or chief governors of Ireland, and it must state distinctly that a case of emergency does exist, signified by the Secretary-at-War, or in Ireland by the chief or under secretary, or the first clerk in the military department. It authorizes any general or field-officer commanding in any district or place, or the chief acting agent for the supply of stores and provisions, by writing under his hand reciting the royal order, to require all justices to issue their warrants.

For such carriages, on emergency, the usual posting or hiring rates are paid, (making no allowance for post-horse duty, tolls, &c.,) and not only baggage and soldiers, but every kind of military store and person may be conveyed upon them.†

* Mutiny Act, 1854, sec. 73. The rates to be paid for carriages, see Appendix. † Mutiny Act, 1854, sec. 75.

The justices are empowered to direct the treasurer of the county to re-imburse constables for sums expended by them.*

Soldiers exempt from Toll.

All officers and soldiers in dress or undress uniform, and their horses, (except when passing in hired or private vehicles), all recruits marching, all prisoners under military escort, and all enrolled in uniform, when called out for training or in aid of the civil power, and all carriages and horses belonging to the Queen, or employed in her military service, are exempt from every class of parliamentary toll, in every port, pier, wharf, turnpike road, or bridge. But this does not include tolls for boats or barges conveying troops &c. *along* canals, except in cases of emergency.†

Booty.

The numerous acts regarding army prize and booty, that in the course of several wars had originated under various necessities, were in the second year of King William IV. consolidated into one act, which may now be considered as regulating the subject.‡

By this act all captures made by the army are divided into such proportions, and according to such general rule of distribution for the army, as the Queen may establish, or in default of any general rule, in such a manner as the Queen under her sign manual shall direct. The only persons exempted from the benefit of the act are deserters, and those who do not claim their shares within six years after being paid to the treasurer of Chelsea Hospital, unless cause is shown and allowed.

Booty Agents.

The appraisements and sales of booty captured by the army are made by agents appointed for the purpose, by the

* Mutiny Act, 1854, sec. 76.
† Idem, sec. 78.
‡ 2 Wm. IV. c. 53.

commanders and other officers entitled to the booty; that is to say, the Commanders-in-Chief and field officers acting on the expedition where the capture is made, appoint an agent; and the other commissioned officers entitled to booty, or the majority of them, if more than one, appoint another agent to act for them. The appointments are made by letters of attorney, duly executed, and no one is allowed to act in capacity of booty agent except those so appointed; and the agents are liable to a penalty if they permit others to share in the commission or enrolment in respect of agency. These agents give proper security for the proper execution of their trusts, to the treasurer and deputy treasurer of Chelsea Hospital. This bond and the letters of attorney are transmitted to the treasurer of Chelsea Hospital and Commander-in-Chief at the Horse Guards; and, in the event of disputes, the letters of attorney are evidence of the agency; and copies of the bond transmitted by the commanding officer are admissible as evidence.

As to the distribution of booty, the officer commanding the successful expedition delivers or transmits to Chelsea Hospital a certified list of the persons entitled to booty; the agent collects the proceeds of the prize and capture, converts them into money, and within one month remits the money to the treasurer of Chelsea Hospital. He also sends accounts of sales, attested upon oath; and he is liable to a penalty of £1 per cent. per month for any delay in that respect.

The agent has for his trouble one and a half per cent. of the booty; but he is not entitled to it until after distribution.

The treasurer of Greenwich Hospital, assisted by the prize agent, if called upon, is to make out the scale of distribution, and at the end of three months from the receipt of prize money he gives notice of the distribution.

For the purpose of receiving and paying claims of prize, the treasurer's office is kept open from ten to four o'clock every week day, and the claim must be made in the printed form, which can be obtained at the office. There is a stamp of one shilling upon every order for prize-money above forty shillings, but no fee is taken upon paying the share.

Prize in conjunct expeditions.

All *Prizes* taken in war by a conjunct expedition of land and sea forces were once considered as vested, in a certain proportion, in the capturing ships, under the prize acts. But these acts apply to captures which are made by ships only: in fact, if a land force is employed, the law does not recognize the sole maritime claim. Prize, the word used in these acts, means maritime capture effected by maritime force *only*—ships and cargoes taken by ships. A land force has no interest in *prize* properly so called; what a land force takes *by itself*, is not prize but *booty*. Now, however, in all conjunct expeditions, the shares of the army are ascertained by the Court of Admiralty, and are then paid over to Chelsea Hospital.*

Military booty in conjunct expeditions.

Military booty, as well as maritime prize, is a creature of the Crown: no man has, or can have, any interest in either but what he takes as the mere gift of the Crown. That prize and booty are clearly and distinctly the property of the Crown; that the Sovran in this country,—the executive government in all countries in whom is vested the power of levying war and making peace—is alone possessed of all property in prize and booty, is a principle not to be disputed. The Crown possesses this right absolutely, and without control: it may deal with such property entirely at its pleasure, may keep it for its own use, may abandon or restore it to the enemy, or finally distribute it, in whole or in part, among the persons instrumental in its capture, according to

* 53 Wm. IV. sec. 29.

whatever scheme, and under whatever regulations and conditions it sees fit.

Hence it follows that the title of the party claiming prize, must in all cases be *the act* of the Crown, by which the the royal pleasure to grant the prize should have been signified on the subject; and whether, when by that act the Crown has shown an intention to part with the property finally and irrevocably, it retains the right of revoking or modifying the grant, is a question that has never yet arisen, and which, when it does arise, will never be found to be decided in the negative.*

By the general Military Prize Act, all captures are to be divided into such proportions, and according to such general rule of distribution, for the army, as shall be established by the Queen; or in default thereof, in such manner as the Queen shall, under her sign manual, be pleased to direct. Here then is a legislative declaration, that, although the prize proclamation appears to make a distribution according to a scheme, without looking forward to any further approbation or alteration, the Crown has still the power to alter that scheme and substitute another; to vary and revoke it; or to make a new distribution upon principles wholly different.†

A question may arise as to what is *land booty*. It is not *prize* properly so called: a land force has no interest in that. Prize is a maritime capture effected by maritime force only —ships and cargoes taken by ships. Nor would it include ships and cargoes taken by a land force from the land, without the aid of ships;—for a capture made at sea by a force upon the land, (which is a case certainly possible, but not very frequent ‡,) is considered generally as a

* Alexander v. Duke of Wellington; 2 Russell and Mylnes, 57.

† 2 and 3 Wm. IV. c. 53, sec. 2.

‡ The surrender of the Tiger is a melancholy example of the possibility of this.

non-commissioned capture, and enures to the benefit of the Lord High Admiral. Thus, if a ship of the enemy were to strike by a firing from the castle of Dover, or other garrisoned fortress upon the land, that would be a *Droit of Admiralty*, and the garrison must be content to take a reward from the bounty of the Admiralty, and not a prize interest under the Queen's proclamations.*

There is, however, one case in which the army is allowed to have the benefit of prize taken by their aid, and *that is* in the case of a joint expedition of land and naval forces: of all ships and cargoes taken by the joint forces in any road, haven, river, or creek, (not the open sea,) belonging to the fortress or possession jointly attacked, the army takes its share.†

In these cases, the Court of Admiralty distributes the prize upon the concurrent application of the conjoined commanders, and by an apportionment commensurate to their numbers; but the court must first see that there is a conjunct expedition, in order to protect the rights of the Admiralty. Even important *auxiliary* aid supplied, claimed, and acknowledged, and that in more than one instance, is not enough to form a conjunct expedition. It may be difficult and perhaps perilous to define it negatively and exclusively. It is more easy and safe to define it affirmatively; that *that* is clearly a conjunct expedition, which is directed by competent authority, combining together the actions of two different species of force, for the attainment of some common specific purpose. The crown is, undoubtedly, the competent authority in all cases, and it is the leading feature of such a case; but it may not, in all cases, be a necessary antecedent ingredient; for if, in a remote part of the globe, two commanders should unite their different species of force

* The Rebeckah, 1 Rob. Adm. R. 235.

† 2 Wm. IV. c. 53, sec. 29.

for the attainment of an important object to the state, but for which it was impossible, on account of distance, to obtain the crown's previous direction, yet if a service is performed that receives its approbation, the court would be inclined to hold *that* conjunction to be lawfully and validly constituted, if within the range of an useful and approved discretion.

The degrees of co-operation for such a purpose are less definable: they may vary in number, magnitude, and extent; and it may be difficult to assign the point where the mere co-operation rises into absolute conjunction. There may be much of the former, that can hardly be characterized as the latter. In a large sense, the army and navy are co-operating throughout a whole war, in distressing the enemy *viis et modes;* sometimes in contact, and sometimes at a distance, and in total ignorance of each others movements and purposes. Many associations may exist, and some co-operation be given occasionally, yet no conjunct expedition. A squadron of armed ships may be employed to carry provisions and reinforcements to an army acting on the land—no doubt a very efficient contribution of assistance—and this may have been directed by a competent authority; but nobody can suppose that such circumstances alone would constitute a conjunct expedition.

The distribution of Army Prize is now regulated by the statute 2 & 3 Wm. IV. c. 53. It places all captures made by the Army to be distributed as the Crown directs; debars deserters of their prize-money; limits the time for claiming prize-money to six years after being paid to the Treasurer of Chelsea Hospital, unless there is good cause shown and allowed; makes provision for the appointment of agents; provides for the payment of prize to the next of kin; and enacts precautionary means against fraudulent claims of prize.

Section XI.

*Military Schools, Colleges, and Asylums.**

Both the Articles of War and the Regulations of the Army are very particular on the subject of Divine Worship. Chaplains to the Forces receive the pay and allowance of Majors. The soldiers, when convenient, attend a church; but in the field, the service is in the open air: more men are not then assembled in the open air than the voice can reach; and the service has to be performed successively to different corps of the chaplain's division, and is to close with a *short practical* sermon, suited to the habits and understandings of soldiers. On detachment duty, if possible, the soldiers attend the parish church. Their wives also are encouraged to attend divine service. Every soldier is at full liberty to attend the worship of Almighty God according to the forms prescribed by his own religion, when military duty does not interfere. Divine Worship.

There is an ecclesiastical officer termed the "Principal Chaplain of the Forces," who superintends all matters of religion connected with the Army; and in order more fully to provide for the services of the church, if the number of soldiers in a detachment is too great for the parish church,

* This Section includes a short account of the moral training and general education of the members of the British Army.

the clergyman is paid an allowance, under the Regulations, for a separate service.

Full provision is also made, both in the Regulations and the Royal Warrant, for religious attendance on the sick; and the clergyman attending and reading prayers to sick soldiers is paid for his service, unless the detachment consists of less than fifty men. Allowances are not given to two several clergymen of different faiths, but to an Episcopalian or a Presbyterian clergyman, according as the body of troops under attendance contains most Episcopalians or Presbyterians. Claims for allowances to the Roman Catholic clergy for attendance at military hospitals are submitted to the Chaplain-General, for special consideration. There does not seem to be any provision for paying the ministers of Protestant Dissenters.

The troops are also supplied with Bibles, Testaments, Books of Common Prayer, and such religious tracts as may be approved for the use of the sick in the hospitals.

Savings' Banks.

With a view to the encouragement of economical and provident habits among the troops, and to diminish the temptation to intemperance and its consequences on discipline, Regimental Savings' Banks have been established in the Army. They are intended to afford the soldier the means of profitably depositing his savings, whether at home or abroad, under *Government security;* and at the same time to give him every practicable facility for withdrawing his accumulation, whenever he may require it for any useful purpose.

It is the duty of Officers in the Army to use their influence to encourage the non-commissioned officers and men under their command to avail themselves of the opportunity thus afforded them of accumulating their savings; particularly as regards tradesmen and handicrafts, as well as when the

troops are in the receipt of wages for employment on the public works; but Commanding Officers are to be careful that the proper nourishment and subsistence of troops are not made subservient to this consideration, or the meals of the soldier stinted to enable him to make deposits in the bank.*

Regimental Schools.

The late Duke of Kent (the father of her Majesty) was the first who in his regiment (the Royal Scots) realized the idea of forming a school for the instruction of young soldiers and the children of the troops. This was about the period when Lancaster first succeeded in placing his system of mutual instruction in a flourishing condition. A serjeant, instructed by Lancaster, became the schoolmaster of the corps; and some time afterwards, when the Royal Scots returned to be quartered in their own country, twelve children of the regiment were publicly examined by Lancaster himself before the University and inhabitants of Edinburgh. The system was quite successful, and the progress of the scholars rapid and effectual. Their master considered the institution as a *wholesale manufactory* of non-commissioned officers.

About the same time however, arose the system of Dr. Bell, a minister of the Church of England (Mr. Lancaster being a Quaker); so that when the Government determined on establishing schools in all the regiments, of the two rival methods they naturally chose that founded by a member of the Established Church.

Though these institutions were originally established for the care and instruction of the children of non-commissioned officers and soldiers, yet raw recruits, until dismissed from drill, are also obliged to attend them—infantry, two hours

* The Savings Bank Ledgers—both regimental, or troop, or company—are to be produced and examined at all half-yearly inspections.

daily; cavalry, one hour. The schoolmasters are selected by the Commanding Officer; and general and other officers in command are enjoined to consider them as deserving personal care and attention. The regimental schools are conducted on military principles, and assimilated to a regiment, according to the system of Dr. Bell, adopted at the Royal Military Asylum.

Both male and female children are admitted:—the girls being instructed, in addition to general education, in useful female occupations; the boys, in a similar manner, are brought up to the trades of armourers, tailors, saddlers, boot and shoe makers, &c. It rests with the children themselves, when they arrive at a proper age, to adopt the line of life to which they give preference.

The non-commissioned officers and men have the option of attending the schools at the following monthly rates:—serjeants 8d., corporals 6d., privates and drummers 4d. Under the original regulations, all children in the regimental schools were required to learn the Catechism of the Church of England: except in the Highland regiments, where the Catechism of the Scotch Church was supposed to be learned; but there was little or no care taken to see the regulations enforced. Under the new system, no catechism whatever is taught; the children are instructed in the great leading truths of revealed religion, and read, as a school book, a compendium of sacred history; but care is taken to avoid controversy, and especially to shun debateable ground as between rival churches. There are clergymen appointed at all stations to attend to the military wants of the troops. These gentlemen are invited to instruct the little ones of their respective flocks in the tenets of the churches to which they respectively belong.

The Sunday classes are well attended, and the children of all churches, while they work together and play together

amicably where temporal matters are in hand, are trained by their masters to pay every respect and attention to the special religious lessons communicated by the clergy *

Royal Military Asylum.

To pass from the Regimental Schools to the Royal Military Asylum, which was founded by a warrant bearing date 1801. It is a school destined for the reception of the orphan and other children of non-commissioned officers and soldiers; and is situated at Chelsea, near Chelsea Hospital, in extensive grounds, on which all the buildings necessary for the establishment were erected for the purpose. In 1803 the school was opened, with the original intention of receiving only 700 boys and 300 girls; but these numbers have since been increased. It was reduced after the peace, but again increased to 850 boys and 400 girls; besides 400 boys who are educated at a branch school.

Royal Military College.

In 1799, the necessity of forming regimental officers, and more particularly those of the staff, having a perfect knowledge of the theory of the art of war, laid the foundation of the institution known as the Royal Military College. In that year thirty officers were admitted as pupils, and two or three professors appointed; in the following year, the number of professors was increased to seven. In 1801, a royal warrant, which was in effect superseded by another in 1808, gave form and regularity to the institution. At present its constitution is as follows:—

It is governed by a supreme board of Commissioners, consisting of the Commander-in-Chief, the Military Secretary, the Master-General of the Ordnance, the Quarter-

* Return relating to Regimental Schools, by G. R. Gleig, Inspector General of Schools, 1852.

Master-General, the Adjutant-General, and the Governor of the Military College. These officers are commissioners by right of their office. Besides these, there are twelve others specially appointed. This supreme board is at once a council of administration and improvement; in it is vested the power of instituting such regulations as may from time to time appear desirable for the government of the institution, the preservation of discipline, and the improvement of studies.

The College is under the immediate command of a Governor and Lieutenant-Governor; and there is also a Major and Superintendent of studies. The other military officers of the establishment are two Captains of Companies of Gentlemen Cadets, and a Quartermaster, who is also Paymaster; there are besides a Chaplain, Surgeon, Assistant-Surgeon, a Riding-Master, and a Secretary to the Commissioners.

All these officers are appointed by the royal commission, and are subject to the Articles of War and Regulations of the Army.

The supreme board names the professors and other persons in the civil employ of the College, and regulates their salaries; but such an act must be established by an order, signed by five of the Commissioners. Vacancies among the professors are filled by an examination as to qualifications, the candidates being publicly advertised for. To encourage men of distinguished talent to become professors; after fifteen years service, (in case their health fails for the discharge of collegiate duties), they are entitled to retire on half-salary, and are recommended for this pension by the supreme board. Their salaries are augmented by a regular scale of per centage for length of service, which, on the termination of the fifteenth year, amounts to one half of the original salary—the maximum of increase. When a pro-

fessor dies, having served the college five years, his widow has a right to the same pension as the relict of an officer of similar rank to that of the professor.

A collegiate board is charged with all details relative to interior arrangement and economy; it is composed of the Governor, Lieutenant-Governor, and Commandants of departments, three of which body are sufficient to constitute the board.

The regulations and decisions of the collegiate board only become permanent, and their accounts definitely settled, when their proceedings have been examined and approved by the supreme board, to which they are entirely subordinate.

With regard to expenditure, all articles are procured for the establishment by public contract and competition, as far as such modes are practicable; and the annual estimates of the charge of the institution upon the public are submitted by the governor to the supreme board, before they are laid before the Secretary of War, to be included in the general estimates of the army. The sums voted for the college by Parliament are then credited by the Exchequer, at the Bank of England, in the name of the agent of the institution, who draws them from the Bank as occasion may require, by authority of the supreme board; to whom he represents the specific objects for which the money is needed.

The College is divided into two departments, differing in the nature of their studies, as well as in the age and rank of the pupils. That for officers studying for the staff of the Army, which was reserved exclusively for such as had attained to manhood, is termed the senior department; the other, for youths previous to their entrance into the service, the junior department.

The students of the junior department are, during their

residence, termed Gentlemen Cadets; and as soon as their instruction is completed, they are entitled to be examined for commissions. When distinguished by merit and assiduity, they are sometimes permitted to continue their studies at the college, after their appointment to regiments, for the further prosecution of their acquirements in different branches of knowledge.

The Gentlemen Cadets are divided into three classes, according to the circumstances and services of their fathers, and pay terms accordingly.*

Chelsea and Kilmainham Hospitals.

As we are now speaking of establishments, this perhaps is the proper place to mention the hospitals of Chelsea and Kilmainham.

The in-pensioners of Great Britain are received into the hospital of Chelsea; those of Ireland into that of Kilmainham. It has been proposed to abolish the latter institution, or at least to allow it to die out; but a parliamentary grant is still annually made towards its maintenance.

The Royal Hospital of Chelsea was commenced by James I., with a view of founding a college of fifteen protestant doctors, with canonries and prebendaries. The special object intended for these theologians of the reformed church was the intrepid maintenance of all points upon which the religious establishment of England differed from that of Rome. This anti-Sorbonne of James received the property of the domain of Chelsea, with the right of using the river there, to supply London with water.

The institution however progressed slowly, and during the wars of the first Revolution was suspended: it finally expired in the time of the Commonwealth. When Charles II. was restored to the throne, his ambition of rivalling

* For the regulations, see Appendix.

Louis XIV. led him to choose Chelsea as a hospital for disabled soldiers; the works of the building were then resumed, and at length finished by Sir Christopher Wren.

Chelsea Hospital, according to M. Dupin, is open to the reproach of an excessive expenditure, both for the support of its vast buildings and the emoluments of the governor and a crowd of persons in its service of every station and of all ranks. The number of persons supported in Chelsea Hospital, including the governor, establishment, secretary, clerks, and pensioners, is in all 641 persons, at a cost of £24,286, (1852), which gives an average of £37 for the support of each person. The number of out-pensioners is 63,176, whose pensions amount to £1,142,230, which gives an average of about £14 for each man; thus a Chelsea pensioner costs the country as much as 2·6 out-pensioners. But it must be remembered that the pensioners at Chelsea are a different class from the out-pensioners, and are supposed to be past labour; whereas many of the out-pensioners are hale and active men for their age, as any one may see if he observes the enrolled pensioners at drill. £14 a-year would be a poor pittance for a man unable to assist himself, and with no one to aid him to a livelihood. The moral effect of Chelsea Hospital is also of considerable service. Every one knows the display made of the splendid retreat of the Hospital des Invalides, at Paris: its effect on the minds of the French nation is wonderful; yet not one worn-out soldier in a thousand can be accommodated within its walls, and no provision is extended to the greater majority of those who have passed their best years in the ranks.

No small portion of the expense of Chelsea Hospital is incurred in the salaries of the officers, whose position is generally given them for distinguished services. The affairs of the Hospital are under the management of a Governor

and Lieutenant-Governor, who are both general officers, an Adjutant, a Major, and a staff of medical men and household servants. Besides the above there are three Captains, and three Lieutenants (who are also called Captains). The Lieutenants are selected by the Paymaster-General for the time, from old and deserving officers. The Commander-in-Chief appoints the Adjutant.*

Kilmainham Hospital.

Kilmainham Hospital is managed by a Master, three resident Captains, an Adjutant, a Chaplain, a Roman Catholic Chaplain, a Physician and Surgeon, and a staff of household servants, &c. It supports at present 144 military officers and soldiers, and costs the country about £6,500 annually.

* Stocqueler, 138; Dupin, vol. i. 244; Estimates for 1854-55.

Section XII.

Miscellaneous.

Duelling.

The discussions that occurred a few years ago induced the then Secretary-at-War (Lord Palmerston), to draw the attention of the Judge-Advocate-General to the subject of Duelling in the Army. In answer to the questions put to him, he stated, that an erroneous notion, to a limited extent, obtained, that an officer can be brought to trial and punished for not *challenging*, or for *refusing to accept* a challenge or to fight a duel; and in charges upon which officers have been cashiered, or otherwise punished, expressions may possibly be found, which, if detached from the context, and considered without reference to the undoubted Law of England and to the clear and unambiguous language of the Articles of War, might afford colour to this error. But it must be remembered that, by the common law of England, duelling, unattended by any injury to either party, is an aggravated offence against the public peace, punishable by fine and imprisonment. Thus, Mr. Justice Blackstone says, "The punishment of common affrays is by fine and imprisonment. Where two persons coolly and deliberately engage in a duel, this being attended with an apparent intention and danger of murder, and being a high contempt of the justice of the nation, it is a strong aggravation of the affray, though no mischief has

actually ensued." Under a recent statute, such persons may become liable to transportation: if death ensues, the parties implicated may be tried for murder. The military code has been, and will continue, consistent with this.

The 107th Article of War, 1844, renders all parties, principals as well as seconds, implicated in duelling, liable to be cashiered. The 103rd and 104th Articles prescribe to a Commanding Officer the duty of preserving order in his regiment, and of placing under arrest all who use reproachful speeches and gestures; a duty enjoined with the view of preventing duels, and of bringing to trial by court-martial parties who offer insults, and who will not afford redress by apology and acknowledgment of their error. Moreover, officers in command of guards are, under the 60th article, punishable for allowing persons to go forth to fight a duel.

By the 104th article, officers of *inferior* rank may place under arrest those who are engaged in quarrels, frays, or disorders; and by articles 35 and 104, any officer, though of superior rank, who refuses to obey, is liable to be cashiered. In the 105th article, Her Majesty points out to the Army that those officers who, (being willing to make or accept frank apologies, explanations, or redress,) refuse challenges—act is as becoming to the character of honorable men,—do their duty as soldiers, and are not only acquitted of all disgrace, but of all opinion of disadvantage. It is manifest, then, that an officer cannot be subjected to trial and punishment for leaving undone that which the law expressly forbids; or for doing that which is thus distinctly declared, not merely to be conformable to military duty, but to be conduct above all blame and reproach.

Yet an officer who allows the stigma of dishonourable conduct to rest upon him, or passes over without notice an insult offered to him, is liable to be brought to trial by a

court-martial; not because he declines to fight a duel, but because, having failed to obtain speedy atonement through the intervention of common friends, or by other lawful means, he neglects to report the matter to his Commanding Officer, and thereby to invite a searching investigation into his character and conduct. By such neglect he seems either to acquiesce in the justice of the imputation cast upon him, and to admit that there is something in his conduct which he fears to lay bare before honourable men; or to show that, regardless of his own reputation and honour, he knows not what is becoming the character of an officer and a gentleman; and that, indifferent to the peace and order of the regiment, he is unmindful of the rules of military dicipline: his conduct then becomes the proper subject of enquiry and adjudication before a court-martial.* To this may be added the opinion of Lord Hardinge, whose judgment, undoubtedly, both as a soldier and a man of honour, is worthy of the highest respect. "The officers of the Army should recollect that it is not only no degradation, but it is meritorious *in him who is wrong* to acknowledge and atone for his error; and that the momentary humiliation which every man may feel upon making such an acknowledgment, is more than atoned for by the subsequent satisfaction which it affords him, and by avoiding a trial and conviction of conduct unbecoming an officer."†

Provost-Marshal.

There is, in every camp, for the purpose of regulating the camp-police, an officer, whose duties might properly have been described in another portion of this work; this officer is called the Provost-Marshal. He has the rank of Captain. His appointment is one of great responsibility, and requires

* Opinion of Hon. T. Nichol, cited in Hughes, 217.
† Hughes, 217.

the utmost vigilance and activity. It is the particular duty of the Provost-Marshal to take charge of prisoners confined for offences of a general nature; to preserve good order and discipline; and to use every possible means to prevent the commission of crime, by frequently visiting those places at which breaches of order and discipline are likely to be committed. He is also to take cognizance of the conduct of all *followers* and *retainers* of the camp, as well as of the soldiers of the Army. With this view, he is frequently to make the tour of the camp and its environs, in order to prevent and detect persons committing acts of disorder, or depredations.

The Provost-Marshal is entrusted with authority to inflict summary punishment on any soldier or individual connected with the Army, *whom he may detect in the actual commission of any offence against order and discipline;* but a recourse to the exercise of this part of his authority is to be limited to the necessity of the case, when the prevalent and continual commission of any particular offence may call for an immediate example.

Plundering and marauding, at all times highly disgraceful to soldiers, under any circumstances in which the Army would take the field in the United Kingdom, and when committed against the persons and properties of our own countrymen, (which it is our duty to protect), become crimes of such enormity as to admit of no remission of the awful punishment which the military law awards against offences of this nature; and the Provost-Marshal, in making his rounds, will be authorized to execute it immediately, and in its greatest rigour, against all such as are detected by him in the fact.

General Officers commanding divisions and brigades, and the staff officers attached to them, are to give their particular attention to the conduct of the Provost-Marshal and of his

assistants, and to take care that every requisite aid be given to enable them to discharge their duties with proper effect; at the same time see that no abuse or improper application may be made of the authority intrusted to them.

Officers in the command of guards or detachments are to give assistance to the Provost-Marshal in the execution of his duty; and any officer or soldier impeding him in the same, or offering him any insult, will receive the most exemplary punishment.

The regiments encamped near villages are to send frequent patrols into them, to apprehend such persons as may be there without passes; or who, having passes, may behave improperly.

Camp-Followers.

The Followers and Retainers of the camp are equally subject, with soldiers, to the provisions of the Mutiny Act and Articles of War.*

As a question may arise under this regulation, as to who are followers and retainers, it may be observed that, when in the field, not only the Army, but its appendages, must be under the immediate control of the officer commanding it, according to the rules and discipline of war. So situated, the sutler, who chooses to follow the camp, identifies himself in a manner with the soldier's purpose in almost everything but that of fighting. At that time, the sutler is liable to be arrested, or otherwise controlled, under any military regulations made for the good of the camp. But this does not seem to apply to cantonments; and if an officer in command were to act towards him as if the force were in the field, he would act under a mistake of his authority, for which he is liable to answer, if it be productive of injury to the other party.†

* Queen's Regulations, 275, 276; Articles of War, 101.

† Smith *v.* Gore, Strange's Madras Reports, p. 435.

Disabilities of Military Men.

Military officers on full pay cannot act as justices of the peace, either in the enlistment or billetting of troops; though there seems to be no law against such an officer being put in the general commission of the peace. At the same time officers on full pay cannot fill the post of sheriff, or such municipal offices as mayor, portreeve, or alderman; nor are they capable of holding any office in any municipal corporation in any city, borough, or place, in Great Britain or Ireland.*

Officers on half-pay could formerly take Holy Orders, and yet retain their half-pay; but this indulgence has been abolished, and not without sound reason, because half-pay is by law a retainer for future service; while the party thus changing his profession enters upon a calling with which a military life would by no means harmonize.† This argument, however, would not seem to apply to anything given in the light of a *reward* for past service.

Officers on full pay are likewise exempted from serving on juries, or the parochial offices of church-wardens, overseers, vestrymen, and the like; but officers on half-pay are not so exempt.‡

Privileges relating to Officers.

An officer can hold every civil office or employment not forbidden by the Mutiny Act; and may be called to the Bar, or be the Fellow of a College.

An officer may also be a Member of Parliament. Any person chosen to be a member of parliament, who accepts any office of profit from the Crown during the time he continues to be a member, voids his election and ceases to be a member. A writ issues for a fresh election, as if the person accepting was naturally dead; but he is capable of

* Mutiny Act, 1854, sec. 54.
† Prendergast, p. 178.
‡ Idem, p. 178.

being elected again, to the same or any other place, for the same parliament.* This rule does not extend to any member of the House of Commons who is an officer in the Army, and who receives any *new or other* commission in the Army.† Three things must then concur to entitle a person to the benefit of this exception. He must be a member of the House: he must at the time actually have a commission in the Army: the appointment received must be in the Army.

Persons who had *formerly* been in the service, but had been dismissed from or quitted the service, are therefore not considered as coming within the exception, which applies only to persons *actually* holding commissions. Thus, in 1745 and 1759, when two members not previously holding commissions accepted the offices of colonel and lieutenant-colonel, new writs were issued; and on the 21st of May 1783, there was a new writ for Newton, "in the room of Mr. L. Wade, appointed ensign of foot in the King's Army." But where a member had been appointed "captain by brevet, not receiving or being entitled to receive pay," it was held not to vacate his seat—22nd January, 1760. In all the former cases, the members held no previous commission.

Accepting a commission as governor or lieutenant-governor of any fort, citadel, or garrison, upon the military establishment, by a member, being an officer in the army, does not vacate a seat.‡ Jersey and Guernsey are military governments within this resolution. But where a military appointment is accepted by persons *not officers in the Army*, such as the offices of Constable of the Tower of London, the Constable of the Tower of Flint, or Governor of Stirling Castle, the seat is vacated.

* 6th Anne, c. 7, sec. 26.

† Idem, sec. 28.

‡ Resolution, 9th June, 1833, 22 Journ. 201.

Accepting the office of Master-General or Lieutenant-General in the Ordnance by an officer in the Army, does not vacate a seat in the House.*

The exception applies to officers in the Navy, as well as to officers in the Army. A difficulty once arose in the case of a naval officer accepting an appointment in the Marines. Admiral Boscawen was appointed General of the Marines in 1759; there being a doubt whether, the Marines being to serve on land as well as at sea and being regimented—and he being only a sea officer—he would not vacate his seat by accepting such an office: the part of the appointment which concerned the land service being to him (a naval officer), a new appointment, and not a promotion in the Navy; but upon consultation of the law-officers of the Crown, it was determined, though with much doubt, that he should not vacate his seat.†

An appointment of an officer to a Colonial Government not only vacates his seat, but renders him ineligible for re-election.‡

Entering the Queen's service, or even accepting a pension for services, does not disqualify to vote for Members of Parliament. In one case a privilege is extended to soldiers. Any freeman, claiming a vote by ancient right, loses his right if his name be omitted from the register for two years; but not so if the omission arises from absence in the Queen's Naval or Military services.

Elections. "The presence of a regular body of armed soldiers, at an election of members to serve in Parliament, is a high infringement of the liberties of the subject, a manifest violation of the freedom of elections, and an open defiance

* Resolution, 22nd June, 1842.

† 2nd Hatsell's Precedents; Rogers on Elections, 7th Edition, pp. 61, 62.

‡ 6th Anne, c. 7, sec. 25.

of the laws and constitution of the kingdom."* This is the language in which the Commons expressed their feeling on military interference with an election at Westminster, in 1741; and as early as the reign of Edward I. it had been commanded, "Upon great forfeiture, that no man, by force of arms, nor by malice or menacing, should disturb any, to make free election." In order to settle the practice on this subject, a statute of George II. enacted† that all soldiers quartered or billetted in any city, borough, town, or place, should be removed to the distance of two or more miles, when and as often as any election of any peer or peers to represent the peers of Scotland in Parliament, or of any member or members to serve in Parliament, should be appointed thereat. But afterwards, from the changes in the law for taking the poll at elections to serve in Parliament, the expense and inconvenience of removing soldiers being greatly increased, it was found necessary to enact,‡ that no soldier, within two miles of any city, borough, town, or place, where any nomination or election of members to serve in the Commons' House of Parliament shall be declared, or poll taken, shall be allowed to go out of the barrack or quarters in which he is stationed, unless for the purpose of mounting or relieving guard, or for giving his vote at such election; and that every soldier allowed to go out for any such purpose, within the limits aforesaid, shall return to his barracks with all convenient speed, as soon as his guard shall be relieved, or his vote tendered. To carry these regulations into effect, the Clerk of the Crown in Chancery is to give proper notices to the Secretary at War, who, in his turn, is to issue

* Parl. Hist. vol. ix. p. 326.
† 8 Geo. II. c. 30.
‡ 10 and 11 Vic. c. 21.

instructions accordingly, to the general officers of districts. It must be observed, that the whole regulation of George II. relating to the election of Peers of Scotland, is by the latter statute left untouched, and at such an election the soldiers must be removed. Troops in attendance upon the Queen, and the ordinary guard at the Bank of England, are not under the operation of either statute.

Contracts for Passage.

When military men are ordered on foreign service, if it is agreed that the passage-money shall be paid at the end of the voyage, and if the voyage be defeated by shipwreck or other means, the shipowner or captain cannot enforce the payment of *any part* of the money; for the contract is entire, to carry the passenger from port to port.

The contract for this purpose may either be express or may be evidenced by established usage. As, for example, where it is the custom, as on West India Voyages, to pay the passage-money before the voyage begins and not to return it although the voyage is defeated, if the voyage has commenced, and the ship is prevented from completing it by the perils of navigation, the captain may be entitled to retain the passage-money previously paid to him; unless it can be expressly shown that the passage-money belongs to the shipowner, and then it must be returned.*

On the other hand, if the ship were lost *before* the commencement of the voyage for which the parties had contracted, the money paid by anticipation must be returned.

When the passage-money is payable at the end of the voyage, the master of a ship has a right to detain the luggage of a passenger until it is paid, but not the clothes he is wearing.†

* Gillan *v.* Simpkin, 4 Camp. 241; Leman *v.* Gordon, 8 C. and P. 392.

† Woolf *v.* Summers, 2 Camp. 631.

Instances have occurred where officers have endeavoured to recover damages when they have been detained by the vessel not sailing on the day published. The question is, whether the time of sailing formed an essential part of the contract? If it is not a real and essential part, but only matter of *representation* while the matter was going on, then it is to be considered whether, under the circumstances, the ship sailed within *a reasonable time.* What is a reasonable time must be determined by the surrounding circumstances.*

Sometimes it happens that quarrels occur on board, arising from the ill conduct both of passengers and captain. Under such circumstances the captain would be justified in excluding even an officer from the cuddy, if he were guilty, in the strict sense of the word, of conduct unbecoming a gentleman. Not that vulgar, offensive, indecorous, and unbecoming conduct, would amount to such conduct; and it would be difficult to determine if foolish conduct would amount to this; but violence of conduct would be an undoubted example. Thus, a man who has threatened a commanding officer of a ship with personal violence, would not be a fit person to remain at the table at which he presided. No action lies against the captain of a ship for not furnishing good and fresh provision to a passenger on a voyage, if the captain has not supplied so large a quantity of good and fresh provisions as is usual. There is in law no real ground of complaint, no right of action, unless the passenger has really been a sufferer; for it is not because a man does not get so good a dinner as he might have had, that he is therefore to have a right of action against the captain, who does not provide all that he ought: there must be a real grievance sustained by the plaintiff.†

* Yates *v.* Duff, 5 C. and P.

† Young *v.* Fewson, 8 C. and P. p. 56.

Officer's Funeral.

A man's funeral is, necessarily, the first charge upon the property that he leaves behind him, and undue outlay upon such an occasion will be no bar to the demand of a creditor: as against a creditor, no more is allowed for a funeral than is necessary. In considering what is necessary, regard must undoubtedly be had to the degree and condition in life of the party. In strictness, formerly, no funeral expenses were allowed against a creditor, except for the coffin, ringing the bell, parson, clerk, and bearer's fees; but nothing for pall ornaments: that rule is now relaxed, and the only guide now is the condition of the party during life, and the estate he leaves behind him.*

Succession to Personal Property.

The law of succession differs in most countries; and in the event of the death of an officer, the distribution of his personal property is regulated by the law of the country of his *domicil*, although he may happen to die beyond its limits. Various definitions have been given of "domicil;" but perhaps the easiest to understand, and in some respects the best, is that "the country of a man's domicil is that which he looks upon as his *home;*" and this is proved by "a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time."†

This question has become of more importance since the possibility has arisen of militia regiments undertaking foreign service; and because the law of succession in Scotland differs from the English law on the same subject.

In the theory of law, the space occupied by the lines of a British army in a hostile country is considered as British territory; so that an officer on active service in a foreign

* Williams, On Executors, 829.

† Phillimore, On Domicil, pp. 11, 12, 13.

country leaves his property to be regulated according to his domicil, as it may be, in England and Scotland. The rule is different, however, with officers engaged in the service of the East India Company. The law of succession of property of British born subjects in India follows that of England. Officers of the East India Company are regarded as not merely in camp, but as permanently resident in India. It is a private service, although the officers have local rank. They are bound to reside in India, and cannot reside elsewhere, except by leave of the Company, and consequently for a temporary purpose. In entering that service, therefore, they are conceived to have abandoned their original domicil, and to have gained a new one.*

It often happens that officers die as they are about to retire from the service, having perhaps made some few arrangements about their return to Europe. The question of their domicil then becomes merely a question of evidence as to whether the deceased had it in his mind to abandon the Indian domicil; retaining the commission is presumptive evidence against such abandonment, as the officer is still bound to reside in India.†

By entering the service of a foreign country an officer acquires a domicil in that country. Generally speaking, a soldier, (whose life is a wandering one,) dying in a foreign service, his property must be distributed according to the law of the country in whose service he is engaged; for he has made himself a subject of those countries, and by his establishment there has lost his native domicil. But when he returns and resigns his foreign commission, he regains his native domicil.‡

* Bruce *v.* Bruce, 2 Cooper, Temp. Cottenham; Munroe *v.* Douglas, 5 Maddock's Reports.

† Lewin *v.* Craigie, 3 Curtis's Eccl. Rep.

‡ Ommaney *v.* Bingham, 5 Vesey's Reports.

Soldiers and sailors, *on actual military service,* are allowed to make wills by word of mouth, or to dictate them without writing. These are termed nuncupative wills. By the statute of frauds, the nuncupative wills of private persons were placed under such regulations as practically abolished them; but an exception was made in favour of soldiers being on actual military service, and marines at sea, who were to retain the right of disposing of their moveables, wages, and personal estate, as before the act: the same privileges are continued by the new Wills Act of 1837.*

The words "*actual military service*" have been construed to mean service "*on an expedition, or on some duty associated with positive danger.*" †

So that military service at any military station in England, as for example at Woolwich, is not "actual military service" for the purpose of a verbal will, however extensive the service. Thus a director-general of artillery on full pay, whose duties extended to the royal artillery abroad as well as in England, and who was liable to be tried by court-martial and subject in all respects to military law, was held not to be on such "actual military service." Nor does simple *Colonial* service give the privilege: as for example, being quartered in barracks with the regiment, in a colony. The only difference from the former case is that the service in the latter is in a colony, the former in England; and this difference is not allowed to create a distinction between the cases.

So strictly is this privilege confined to military service of an expeditionary character, that it was refused to a general officer who at the time of his death held the military command of the Mysore division in India. The general died

* White *v.* Repton, 3 Curtis's Eccl. Rep. p. 818.

† Drummond *v.* Parish, 3 Curtis's Eccl. Rep. p. 522.

whilst on a tour of inspection of the troops under his command. He was liable at that moment to be called upon to march with his division, or any other body of troops, to whatever point the exigency of the wars then going forward in India might have required; and was, according to the rules of the Army, and in military understanding and acceptation, in "*actual military service.*" *

The privilege of nuncupative wills extends to soldiers in the East India Company's Service, and also to any soldier under age, who is on actual military service.†

"Military men dying abroad sometimes appoint a firm of bankers or agents to be their executors." In regard to this practice, it is necessary to mention the case of the late Lieutenant-Colonel Fernie, who died in India some time after he had made a will, whereby he nominated Messrs. — and Co. as his executors. The members of the firm in question had dissolved partnership before Colonel Fernie's death; and under those circumstances, it was decided that the appointment wholly failed. Even if the firm had continued to exist, a change in its membership subsequently to the date of the will would probably have had the same effect, unless the testator made the "members for the time being" his executors.‡

The written wills of officers on actual military service, when unattested by the usual formalities, take the place of nuncupative wills.

There are a few other points with reference to the position of a soldier on service.

Thus, to secure the government in the debts owing to it by soldiers and officers, it has been enacted that the regi-

* 1 Robertson's Eccl. Rep. p. 276.

† Donaldson's Case, 2 Curtis's Eccl. Rep. p. 386; Farquhar's Case, 4 Notes of Cases, p. 651.

‡ Prendergast, p. 206.

mental debts of these persons shall be paid out of their effects, in such proportions as the Secretary-at-War shall direct, in preference to any other debts of such officer or soldier.*

Again, to secure the service of the soldier, the Mutiny Act provides that no enlisted soldier, and no commissioned officer or drummer on the permanent staff of the disembodied militia, shall be liable to be arrested or taken out of the Queen's service in respect of any debt less than £30. This would include private marines, who are, to all intents, enlisted soldiers.

It is the custom of our courts to require all persons resident, and being subjects, to give security for costs; or otherwise, if they were unsuccessful, they might run away: but this does not apply to officers on service; nor even to an officer who may have left the country and taken a command in foreign service by leave of the government, unless he can be made out to be a foreigner: and officers of the British Army who have gone to join foreign powers are not considered to be foreigners. The same rule applies to Englishmen who are prisoners of war in foreign countries.†

When an officer or soldier is arrested or imprisoned, it is laid down by the Articles of War that he shall not be kept in confinement more than eight days, or until such time as a court martial can conveniently be held. In some few cases, where soldiers have been longer kept in confinement, they have endeavoured to obtain their discharge by writ of *habeas corpus;* but, although on principle it would be obtainable, there is no instance of its having been actually obtained. The superior courts have undoubtedly the power of ex-

* Stat. 58 Geo. III. c. 73, secs. 1 and 2.

† O'Lawler v. McDonald, 8 Taunt. 736; Tullock v. Crowley, 1 Taunt. p. 18.

amining the merits of military proceedings. The court will not, however, grant such a writ, when the delay is satisfactorily explained; if it be not a wanton or oppressive delay, but arising out of the circumstances of the country.*

An officer absent without leave cannot be arrested as a deserter, in time of peace. †

Officers and soldiers must attend as witnesses at courts of justice, when duly summoned, and for this purpose the commanding officer is bound to grant leave of absence.

The legal discharge of an officer from military service may be effected in four ways:—1. By royal mandate: 2. By sentence of a court-martial: 3. By sentence of a civil court: 4. By voluntary resignation.

It has been more than once mentioned in this volume, that commissions, being held at the sole will and pleasure of the Crown, a royal mandate or order is at any time sufficient for the summary discharge of an officer from the formality of a court of inquiry or a court-martial. This power of the Crown is not affected by the circumstance of an officer having purchased his commission, the value of which he forfeits upon dismissal; though, by way of indulgence, an officer so situated is usually allowed to sell one of the steps of his rank.‡

The East India Company, by the contract it makes with its officers, possesses similar powers over them; and, by an express Act of Parliament, military officers in the service of the East India Company may be summarily dismissed by the Crown, without the intervention of a court-martial or a court of inquiry.§

* Blake's Case; Wade's Case, 2 M. and S. 428.
† Prendergast's Law of Officers, 181.
‡ Prendergast, p. 207.
§ Ibid. and 53 Geo. III. c. 155, sec. 74.

This power of dismissal is a constitutional prerogative, of which the Crown cannot divest itself, being entrusted with it for the good of the Army and the safety of the state. Any attempt, therefore, on the part of the Crown to give an officer an indefeasible right to his commission, is unconstitutional and void.

Similarly, this indefeasible power of the Crown is in no way controlled or affected by the sentence of any court-martial. There has been instance after instance, in which, after acquittal by a court-martial, the parties had been dismissed; and this, not from any notion that the court had acted improperly, but because there have been many cases in which legal guilt could not be proved, yet in which there have been circumstances to affect the character of a gentleman, or the harmony of a regiment, or in some other way the good of the service. Nothing has at some times been so common as to dismiss those whom a court-martial had not ordered to be dismissed; leaving, or not leaving, to an individual the price of his commission: which is another circumstance on which the Crown may exercise its discretion.

Conversely, the sentence of a court-martial declaring an officer incapable of future service, is not binding on the Crown, neither with respect to military or civil employment.

Courts-martial have the power of sentencing officers to dismissal from the service, under various sections of the Mutiny Act.

Two cases have been mentioned before, in which officers may be *ipso facto* cashiered from the service, on conviction before any Court of Record at Westminster, Dublin, or Edinburgh; and become disabled by those convictions from again serving the Queen. As suggested by Mr. Prendergast, this incapacity of future service is not removed by a Royal pardon. These are the only cases in which the

sentence of a civil court operates as a dismissal from the service.

The monarch of this country has a general power to call upon every one of her subjects to assist and aid her in carrying into execution her legal powers and duties, and to continue that assistance as long as she deems it necessary; on this principle, an officer who has accepted a commission is not at liberty to resign it without the permission of the Crown, directly granted and notified through the proper channel. The tender of a resignation is, during the time of peace, uniformly accepted; though difficulties, even then, are sometimes thrown in the way of certain classes of officers, such as medical officers on distant stations, whose place cannot be readily supplied.

It is said that Lord Raglan has lately refused to accept the resignation of many officers; but he would have no power to accept their tenders, unless it were expressly delegated to him in his own commission; such a prerogative being peculiarly seated in the Crown.

In the cases of Parker *v.* Lord Clive, and Vertue *v.* Lord Clive, it was laid down that "The officers in the East India Company's Service are not bound for *life* by their contract; but that they have not a right to resign their commissions at *all* times, and under *any* circumstances whatsoever, *whenever* they please. The commission received in this service contains no engagement or obligation on the Company, to keep an officer a moment longer than they like; nor upon him, to continue in their service longer than he likes; either party are at liberty to put an end to the contract, under *proper* circumstances, and in a *proper* situation." *

But the position of an officer in the East India Company's service, which rests upon the contract between the Company

* 4 Burrows, pp. 2419 and 2472.

and the officer, does not apply to an officer in the Queen's service, who is drawn into the service, under a royal prerogative, and who is disciplined and paid under the authority of parliament; even bodily or mental infirmity, or very advanced age, would not form a legal claim to be discharged, although it might found a good excuse for neglect of duty. The Crown is sole judge of the usefulness to itself of an officer's service.

Section XIII.

The Royal Marines.

The Marines are a body of soldiers employed in the fleet and naval service, under the direction of the Lords of the Admiralty. When on board ship they are subject to the laws relating to the government of the Queen's forces at sea; but as these forces are often quartered, or are on shore; or sent on duty on board transport ships, merchant vessels, Queen's ships; or may be in circumstances in which they would not be subject to maritime laws; a Marine Mutiny Act is annually passed for their discipline.

It resembles, in all essential particulars, the Military Mutiny Act, with some exceptions, which will now be pointed out; and where no distinction is shown, it may be taken that the Marine Act is the same as the other.*

The Marines' Articles of War are not made by the Queen, but by the Lords of the Admiralty, and are given under the hands of two of these Lords. They apply in any place on shore or afloat, in or out of the Queen's dominions, at any time, when or under any circumstances in which the marine forces are not amenable to the laws for the government of Her Majesty's ships, vessels, and forces by sea.

The Lords of the Admiralty from time to time grant commissions or warrants, under the hands of two or more

* Marine Mutiny Act, 1854, Preamble.

of them, for holding general and other courts-martial. They also grant commissions or warrants to officers commanding in chief, for the time being, any force of Marines in any part of the world, to convene, and also giving authority to convene, courts-martial, as occasion may require, whether the offence to be tried was committed before the officer took the command or not. The officer so commissioned must not be below the degree of a field-officer, except on the coast of Africa, where he may be a captain. The offence is tried where the offender is at the time of trial, not necessarily where the offence was committed.*

The constitution of maritime courts-martial is exactly the same as in the Army, except that the sentence of a district or garrison court-martial requires confirmation by the general officer, governor, or senior officer in command of the district, garrison, island, or colony, where the case is tried.

The regimental court-martial of the Army is, in the Marines, termed a divisional court-martial. Their constitutions are identical.†

When necessary or expedient, officers of the land or marine forces sit in conjunction on courts-martial, whether the commanding officer assembling the court belongs to the land or marine forces. If the prisoner is a marine the proceedings of the court follow the Marine Mutiny Act; if a land soldier, then those of the Military Mutiny Act.‡

If there is no superior officer of the land force present in command of a district, garrison, or other station where Marines may be serving, any officer of the Royal Marine Corps of the degree of a field officer, and holding a commission from the Lords of the Admiralty for that purpose, but not otherwise, may convene or assemble a district or garrison

* Marine Mutiny Act, 1854, sec. 7.
† Idem, secs. 8 to 12.
‡ Idem, sec. 13.

court-martial; and the Court may try any Marine below the rank of commissioned officer for any offence cognizable by a district or garrison court-martial. The sentence requires the confirmation of the senior officer of the Royal Marines, not being a member of the court, in the district, garrison, or other station. But if there should be any superior officer of the land forces present in command of the district, garrison, station, or place where there are Marines, it is lawful for him to convene or assemble such a court-martial. In this case, the trial is on the same principle, and the sentence requires the same confirmation as before.*

In the year 1853, *five thousand seven hundred* Marines were employed afloat, and *five thousand three hundred* on shore, making in all *eleven thousand.* The whole cost of this force, including wages, £7,000 for good conduct-pay to Marines afloat and ashore, clothing and appointments, barrack stores and necessaries for the four divisions, was £317,982.

The Royal Marines are divided into infantry and artillery. The force is separated into four divisions, the Chatham, Portsmouth, Plymouth, and Woolwich companies.

The senior officer of the whole force holds the rank of major-general, each division being commanded by a colonel-commandant, and a colonel second commandant. There are also two colonels-commandant who are aides-de-camp to the Queen. There are besides 14 lieutenants-colonel, 82 captains, 15 of whom hold higher rank by brevet, 78 first lieutenants, 55 second lieutenants, besides 8 adjutants, and 4 quartermasters chosen from among the first lieutenants, and 4 other quartermasters.

The artillery force is officered by 2 lieutenant-colonels, 7 captains, 2 laboratory captains, 22 first lieutenants, 6 second lieutenants, and one first lieutenant acting as adjutant.

* Marine Mutiny Act, 1854, sec. 14.

The rank of major is unknown in the Marines. The duties of colonels-commandant are of a special nature; those of the rest of the officers on shore at head quarters correspond with the duties of officers of the line regiments. Promotion in the Marines has hitherto been governed entirely by seniority, but it is not improbable that this will at no distant period be altered.

The general staff of the Marines consists of a deputy adjutant-general and assistant adjutant-general; the former also holds the rank of major-general; the latter is generally a captain, holding higher rank by brevet, and receives higher pay for this office.

The Marines rank between the 49th and 50th regiments, and bear the motto, "*per mare, per terram.*"

The qualifications of a Cadet of the Royal Marines are:—age, fifteen to nineteen; an acquaintance with arithmetic; algebra; Euclid's Elements, books 1, 2, 3, 4, and the usual college portions of books 6 and 11; proof of rules in trigonometry, and the construction of logarithmic tables; application of trigonometry to the determination of heights, distances, &c.; trigonometry, theoretical and practical; mensuration of planes and solids; problems in gunnery; and to write correctly from dictation.*

The Marine service, by its nature, is generally rendered in small detachments, under captains and subalterns; and by the practice of field-officers seldom being employed on sea duty or foreign service, it frequently happens that the senior officer of Marines in a great naval engagement holds no higher rank than that of captain.

* Stocqueler, p. 86; Navy Estimates for 1854; Marine Mutiny Act; Naval and Military Enquiry, 1840.

Note on the Medical Staff.

It was intended, as announced in a previous part of this work, to give a full account of the Medical Staff, but it has been found impossible to obtain any very satisfactory information. The work called "Royal Regulations for the Medical Service" is *out of print;* nor has it been found possible to obtain anything from the Director-General's office. The following, however, is a short account of its organization.

The system has been more often changed than any other portion of the army service. The present head is termed the "Director-General;" under him are two "Inspectors-General," stationed in Bengal and Turkey. Under these are 19 "Deputy Inspectors-General," of whom 4, viz., those at Canada, Windward and Leeward Islands, Dublin, and Gibraltar, have the *local* rank of Inspectors-General. The principal medical officer of Chelsea Hospital has the local rank of Deputy Inspector-General for the duties of Chelsea Hospital.

The remaining ranks are, Surgeons of the first class (45), Surgeons of the second class (64), a principal Apothecary and 4 Apothecaries (which are offices lately re-established), Assistant-Surgeons (128), Acting Assistant Surgeons (16), a Purveyor-in-Chief, and 13 Purveyors.

The locality of all the officers subordinate to the Director-General is determined by the extent of the force to which they may be attached. All the regimental surgeons make their reports to and consult the staff officer who is placed in their district.

THE

MILITARY FORCES AND INSTITUTIONS

OF

GREAT BRITAIN.

THEIR

CONSTITUTION, ADMINISTRATION, & GOVERNMENT, MILITARY AND CIVIL.

PART II.
THE MILITIA & VOLUNTEER CORPS.

Section I.

The Militia.

The Militia is the only armed force which is truly national in England. Its origin has been described in a former section. It arose in connection with the military system of feudal tenure, which was not wholly abolished until the time of Charles the Second. From that time, a new organization of Militia was requisite in place of the feudal array. Proprietors were divided into separate classes; the most wealthy were required to furnish a horseman with his arms and equipment, those of less substance a foot soldier with his arms.* Its Origin.

It was however only in 1756, that the dread of invasion caused serious attention to be bestowed upon the restoration to efficiency of this important branch of the public force; it was ameliorated by degrees, during the reigns of George the Second and George the Third. Under the first of these princes, the force of the militia was fixed at 37,740 men; it has since been considerably increased. The duration of

* Dupin, 136.

the service of a militiaman, which was first *three* years, was increased to *five* by the act of 26th George the Third. Formerly also the Militia of Great Britain and of Ireland could not, under any pretext, be sent out of their respective kingdoms; but at the epoch of the rebellion of 1799, an Act of Parliament suspended a restriction so hurtful to the defence of both countries, in favour of such of the English militia as should volunteer to pass over into Ireland; and finally, in 1811, this sort of barrier, which limited the services of the Militia to particular parts of the three kingdoms, was abolished for ever.*

"In reflecting," says M. Dupin, "upon these different measures, it will be apparent that they have all had for their

* The following is an abstract of this act, the 51st Geo. 3rd, cap. 118:—

An Act to permit the interchange of the British and Irish Militias respectively.
1st *July*, 1811.

Men raised for the Militia shall be liable to serve in any part of the United Kingdom.

Whereas it would materially conduce to the better defence and security of the United Kingdom, if the services of the regular Militia of Great Britain and the Militia force of Ireland were extended to all parts of the United Kingdom; all persons who may be commissioned, raised, and enrolled, in and for the regular Militia of Great Britain, or in and for the Militia of Ireland, are liable to serve in all parts of the United Kingdom of Great Britain and Ireland.

Militia under this Act to be raised as under the former Acts for raising the English, Scotch, and Irish Militias.

The regular Militia, in England and Scotland, and the Militia of Ireland, shall respectively be raised under acts of the forty-second, the forty-ninth, and every other act relative to the Militias of England, Scotland, or Ireland.

Force so raised to be called the Militia of the United Kingdom.

The force to be raised in England, Scotland, and Ireland, for extended service, to be called "The Militia of the United Kingdom;" and the parts of it to be raised in Great Britain or Ireland shall be respectively entitled to the same rank, privileges, and exemptions, civil, military, and religious, and subject to the same rules and regulations as the militias now are respectively entitled or subject to.

Officers disabled, entitled to half-pay, &c.

All commissioned officers of the Militias, whose service is thus extended to all parts of the United Kingdom, disabled in actual service, are entitled to half-pay, according to their ranks; and all non-commissioned officers, drummers, and privates, are entitled to the benefit of Chelsea Hospital, and the widows of commissioned-officers killed in service are entitled to pensions for life given to widows of officers in regular forces.*

* The 17 Vic. c. 13, sec. I, does not seem to apply to this section.

object an organization more military than before, and adapted to the defence of all parts of the empire."

The spirit in which the Militia has been established, is pointedly marked out by the preamble to the General Militia Act. It says, "that a respectable military force under the command of officers who possess a property in the soil of the country, is essential to the Constitution; and that the Militia, as by law established, being always in readiness to render effectual service with the least delay, has been found of the utmost importance for the interior defence of the country."

Great Britain and Ireland are divided into counties, in which the defensive force and conservation of the public

Lord-Lieutenant.

Limiting the period for which Regiments of British or Irish Militia are to serve in Ireland or Great Britain respectively.

No corps of British or Irish Militia shall continue to serve in Ireland or Great Britain respectively, for any longer period than two years successively; and no greater number than one-fourth part of the Militia of Great Britain can, any one time, be employed in Ireland; nor any greater number than one-third part of the Militia of Ireland be at one time employed in Great Britain. In case of any actual invasion or rebellion, or of a state of war, of and in any part of the United Kingdom, the Queen employs, in great Britain or Ireland, any number of the Militias of either part of the United Kingdom, necessary for defeating or suppressing invasion or rebellion, or carrying on war; or retains in either part of the United Kingdom, during the continuance of rebellion or invasion or war, any corps of Militia of either part of the United Kingdom, although that corps may have, previously to the suppression of rebellion or invasion, served its full period of two years in the other part of the United Kingdom; anything in this act to the contrary, notwithstanding. So soon as any invasion or rebellion has been defeated or suppressed, or war ceased, (signified by proclamation), every corps of Militia having served its full period of two years, is to return to that part of the United Kingdom for which it was originally serving.

No corps of British or Irish Militia, having once performed its period of service in Ireland or Great Britain respectively, can be again liable to serve in Ireland or Great Britain, until the expiration of six or four years respectively, calculated from the termination of such period of service, in case of any actual invasion or rebellion or state of war.

No corps of the Militia of Great Britain shall be called upon to serve in Ireland, nor any of the Irish Militia in Great Britain, until the Queen's pleasure has been signified by the Secretary of State, or by the Lord-Lieutenant of Ireland.

peace are confided to men of high birth and great fortune, and in former years having their property in the province where they exercise their authority, under the names of Lords-Lieutenants in Great Britain, and Governors in Ireland. Their functions are gratuitous. They are appointed by the Queen, in England and Scotland; and by the Lord Lieutenant of Ireland, in his government.* Each Lord Lieutenant presides over the arming, arraying, training, exercising, formation, instruction, and disbanding, of the Militia;† and subject to regulations made by the Secretary of State,‡ (limiting the ages of persons appointed officers, and for securing officers qualified to discharge their duties,) the Lord Lieutenant names the officers, and certifies their names and future rank to the Queen; but that his choice of them and also of Deputy Lieutenants may be valid, it is necessary that in the fourteen days which follow the presentation of the nomination to the Privy-Council, they shall not have been disapproved by the Sovereign; or in Ireland by the Lord-Lieutenant of Ireland. The appointments are then published in the London Gazette.§

When however the new Militia was called out, all officers then holding commissions in the Militia were allowed to continue to hold them, and take rank from the original date of their commissions. Even those who did not chose to continue in the active service of the Militia were allowed to continue their rank and allowances for past services, &c.‖ No com-

* 17 and 18 Vic. c. 106, sec. 2.

† 42 Geo. III. c. 90, sec. 2. In Ireland, however, it is provided, that the Commanding Officer of each regiment has the chief command, and not the Governor of the county; 49 Geo. III. c. 120, sec. 12.

‡ In Ireland, may be made by the Lord Lieutenant; 17 and 18 Vic. c. 107, sec. 4.

§ 42 Geo. III. c. 90. sec. 3; 15 and 16 Vic. c. 50, sec. 1; 17 and 18 Vic. (Scot.) c. 106, sec. 13; 49 Geo. III. c. 120, sec. 10.

‖ 17 and 18 Vic. (Scot.) c. 106, sec. 14; 17 and 18 Vic. (Ireland), c. 107, sec. 10; 15 and 16 Vic. c. 50, sec. 7.

mission is vacated by the revocation of the commission of the Lord Lieutenant.*

Each Lord Lieutenant (or, in Ireland, the Governor of a county, or a majority if there is more than one,) choses deputies to second him when present, and to replace him in his absence, their names having been first presented to and approved by Her Majesty (or, in Ireland, by the Lord Lieutenant).† His functions are filled, in his absence, by three of the deputies authorized by the Crown. He may, however, when he is ill or absent from the country, appoint his Vice Lieutenant to act for him for the county;‡ or in England, with the approbation of the Crown, appoint any *one* Deputy Lieutenant to act as Lieutenant for a *division* of a county.§ Deputy-Lieutenants.

There must be at least *twenty* deputies for a county, if it is possible to complete that number, fulfilling the conditions prescribed by the law.

For the purposes of qualification for deputies and officers the counties are divided into two classes.‖ The first class

* 42 Geo. III. c. 90, sec. 4; 49 Geo. III. c. 120, sec. 67.

† If the Governors neglect to appoint deputies the Lord Lieutenant may appoint them; 49 Geo. III. c. 120, sec. 66.

‡ 17 and 18 Vic. c. 106, (Scot.) secs. 3 and 4.

§ 55 Geo. III. c. 65, sec. 9; 46 Geo. III. c. 96, sec. 45.

‖ When it shall appear necessary to any Lieutenant of a county that a Deputy-Lieutenant or Deputy-Lieutenants should be resident in any royal burgh within the county of which he is Lieutenant, it shall be lawful for such Lieutenant, with the approbation of Her Majesty, to appoint the Provost of such burgh for the time being, or any persons, not being more than three, resident in such burgh, who shall be respectively in possession of a real estate in property within such burgh, of one hundred pounds of real rent, to be Deputy-Lieutenant or Deputy-Lieutenants of the subdivision of such county within which such burgh is situated. Deputies in Royal Burghs.

Within the city and county of Edinburgh and liberties thereof, the Lieutenant of the said city, or where there is no Lieutenant appointed, then the chief magistrate thereof, shall appoint the Deputy-Lieutenants, and, in officers of the Militia, number and rank in proportion to the quota of the said city; and provisions made by this Act with respect to the counties at large, and the Militia thereof, shall take place and be in force with respect to the said city and its liberties and the Militia thereof; and the qualifications Qualifications within the City and County of the City of Edinburgh.

being all counties not in the second. The second class are less wealthy than the others, requiring less income for the militia officers. They are Cumberland, Huntingdon, Monmouth, Westmorland, Rutland, and the counties of Wales. The Isle of Ely stands alone in qualification. Cities and towns that are counties within themselves form another class.* Qualification is required only for rank of Captain or any higher rank.†

Qualification. The following incomes constitute eligibility to the different ranks in the Militia.

	First Class Counties.	Second Class Counties.	Isle of Ely.	Cities. Income or Estate.
	£	£	£	£
Deputy	200	150	150	150 or 3,000
Colonel	1000	600	. .	300 „ 5,000
Lieutenant-Colonel	600	400	. .	
Major	400	200	. .	
Captain	200	150	100	150 „ 2,500‡

of Deputy-Lieutenants and officers of the Militia of such city and its liberties to be as follows: every Deputy-Lieutenant shall be in possession, either in his own right, or in right of his wife, of a real estate in property, within the said city and liberties thereof, of one hundred pounds of real rent; and every Lieutenant-Colonel shall be in possession in like manner, of a like estate as aforesaid, of two hundred pounds of real rent; and every Major or Captain shall be in possession, in like manner, of a like estate, as aforesaid, of one hundred pounds of real rent; saving always and reserving to the Royal College of Surgeons in *Edinburgh* all rights, immunities, privileges, and exemptions, of which the said College may have been and still are in the lawful possession, and the benefit of any Act or Acts of Parliament passed heretofore in their favour.*

* General Militia Act.

† 15 and 16 Vic. c. 50; 17 and 18 Vic. c. 107, secc. 5; Idem. c. 106, sec. 11.

‡ In Ireland the scale is as follows:—

	Income of		Heir apparent to an income of
Deputy-Governor	£200	or	£400†
Colonel	2000	„	3000
Lieutenant-Colonel	1200	„	1800
Major	300	„	600
Captain	200	„	400

* 17 and 18 Vic. c. 10, secs. 8 and 7. † 49 Geo. III c. 120, sec. 69.

In counties of the first class the heir apparent of a person possessing *double* the usual qualification, is qualified for deputy or Field-officer, and *any* son of a person possessing a double qualification, is eligible for the rank of Captain; but no privilege is extended to heirs or sons in cities and towns. An exception is made in favour of the Peerage. Every peer and his heir-apparent can obtain all ranks in the Militia without being obliged to prove their property, or to make any return of his qualification to the clerk of the peace.* In Scotland, the counties reckon as counties of the second class; the qualification, however, of the heir apparent or son being the same as that of the ancestor.†

The qualification may be either landed or personal estate, and in Scotland real rent also.‡

If in land, either freehold, copyhold, or customary freehold, or an estate in land for some long term of years, determinable on one or more lives, possessed or entitled at law or in equity, for the officer's own use or benefit, in possession for his own life or the life of his wife. If the qualification is a landed estate, the land may be situated in any part of the United Kingdom.§ In England also immediate reversions or leases for lives on reserved rents of the clear yearly value to the lessees of £300, are deemed equal to a qualification required of £100, and so on proportionally. Estates in law or equity, for the officer's own use and benefit in possession, originally granted for twenty years or more, equal in value to the estate required for qualification, are sufficient.‖

* 42 Geo. III. c. 90, sec. 14.

† 17 and 18 Vic. (Scotland) c. 106, sec. 6.

‡ 17 and 18 Vic. c. 106, sec. 9; 17 and 18 Vic. (Ireland) c. 107, sec. 6.

§ 17 and 18 Vic. c. 105, sec. 31; 17 and 18 Vic. (Ireland), c. 107. sec. 6; Idem, (Scotland) c. 106, sec. 6.

‖ 42 Geo. III. c. 90. secs. 6 to 11; 15 and 16 Vic. c. 50, sec. 4. No deputy, or officer above the rank of subaltern, can be appointed until his qualification has been delivered to the clerk of the peace.

Veteran Officers Qualified.

In order to give the Militia the service of veteran officers, *any* officer who has served five years in the Army or East India Company's Service, may, without any property qualification, be appointed a Captain of the Militia; and any one holding, or who has held, the rank of Captain or any higher rank, may similarly be appointed a Captain or Major of Militia; and, if having held higher rank in the above forces, may, without any such qualification, be appointed a Lieutenant-Colonel or Colonel of the Militia; and any one qualified to receive, or who shall have received, a commission of Major or Lieutenant-Colonel in the Army, is qualified to receive and hold a commission of a higher rank in the Militia.*

Commissions in the Militia are not vacated by the revocation of the powers of the grantor.†

In order to give the County-Lieutenant a more direct interest in the corps of his county, he is allowed to act as Commandant, (if no other is appointed,) with the rank of Colonel, but the pay only of the proper Commandant.

The rank of Colonel can also be acquired by a Lieutenant-Colonel, who has been Commandant of a battalion for five years, while the Militia has been embodied.

In order to give the officers as much liberty as possible, Militia officers who, from any reason, accept a commission of the same rank in any other corps, rank in the service according to the date of the vacated commission.‡ Again, that Commandants may be free to travel, when away from Great Britain, the Queen may direct the officer next in command to act, with all the powers of Commandant, until the other returns and notifies his arrival. When the officer

* 15 and 16 Vic. c. 50, sec. 2; 17 and 18 Vic. c. 107, sec. 7; Idem, c. 106, sec. 10; Idem, c. 105, sec. 31.

† Militia Act (Scot.) 1854., sec. 5; 49 Geo. III. c. 120, sec. 11.

‡ 17 and 18 Vic. c. 106, sec. 15.

next in command assumes the command, he must, within seven days, notify the absence of his Commandant to the Lord-Lieutenant, and if in actual service, to the Secretary at War.*

Orders that have been given by an absent Commandant are to be completed, and the money to be paid to the tradesmen, to his order, though he may leave Great Britain; similarly, the orders given by the officer who acts for him during his absence are to be completed and paid for on his order, even after his superior's return.

Permanent Staff.

In addition to the ordinary regimental officers, who are only bound to appear for exercise and training, every regiment or other independent corps of disembodied Militia has a permanent staff attached to it, consisting of one adjutant, one serjeant-major, one serjeant for every forty privates, and one drummer for every two companies, with an additional drummer for each flank company, and one drum-major for every corps of eight companies and upwards.

This permanent staff is at all times subject to the annual Mutiny Act and Articles of War, and under the command of the Commanding Officer of the corps of Militia. The persons composing it are bound to reside in the place where the arms of the regiment are kept, and are under the command of the adjutant, who is also bound to be resident in the same place, and to act in his command under the orders of his commanding officers. The principal duty of this staff is to take care of the arms and military stores of the regiment.† Where no barracks are provided for them, they may be billetted in the usual manner.

The adjutant who commands the permanent staff is ap-

* 17 and 18 Vic. c. 106. sec. 17.

† 16 & 17 Vic. c. 116, sec. 4.

pointed by the Queen,* and if an officer of the regular forces preserves his army rank, when he has served five years, the Lord-Lieutenant of his county, (or in Ireland his Colonel) may appoint him to the rank of Captain, without any qualification; but he is always junior to the other Captains of his corps, and receives only his Adjutant's pay.†

To corps, if not less than two companies of sixty men, the Queen may appoint a Surgeon, who receives an allowance during the exercise of the Militia and his own attendance on enrolments, and is paid for medicines, &c.

With respect to the other officers of the regiment; to corps of not less than 360 privates, the Queen may appoint Quarter-Masters, whom the Colonel may recommend to the Lord-Lieutenant for the rank of Ensign, though not entitled to any pay but that of Quarter-Master.‡

In a similar manner the Queen appoints proper persons to be pay-masters, and it would seem also in certain cases battalion clerks. When the regiment is disembodied, the serjeant-major and serjeants are appointed by the crown; but when drawn out, the colonel is allowed to supply the vacancies.

In actual service there is one serjeant and one corporal to every *twenty* privates, and two drummers to every company; being one additional to every company for active service.

But in order to form a band, a number of extra drummers may be kept, at the private expense of the colonel or officers of the regiment, as musicians, and the commandant of every regiment may appoint a drum-major to them.

* In Ireland, by the Lord Lieutenant of Ireland.

† In Scotland, no Captain of a company can be appointed Adjutant, Pay-Master, or Quarter-Master of Militia.

‡ No battalion in Ireland was originally under six companies of sixty-five privates each, and therefore this limitation does not appear in the statutes of 49 Geo. III.

Disembodiment of the Militia.

Long previous to the year 1802 a respectable Militia force under the command of officers possessing landed property within Great Britain, had been found essential to the constitution; and the Militia then established by law, through its constant readiness on short notice for effectual service, had been found of the utmost importance to the internal defence of the realm. In that year, being the year that the country was threatened with invasion by Napoleon, it was thought expedient that the numbers to be raised and kept in constant readiness in Great Britain should be augmented. For that purpose all former statutes relating to the Militia were repealed, and the whole law was consolidated into one act (42 Geo. III. c. 90.)* That act (which has since been amended by other statutes) was perpetual, and provided for the whole machinery of a Militia on an active footing; and under that statute the Militia was subjected to be annually ballotted for and called out for training and exercise. Sometime after the close of the last war, however, it was found that these annual proceedings were productive of very much cost and inconvenience, without any apparent equivalent advantage; hence the legislature have annually, or in some cases bi-annually, passed an act to suspend those parts of the General Militia Act that related to making lists and ballots of the Militia.†

The machinery of the Lord-Lieutenancy, however, remained, and the commissions of the officers were still in force; and thus there were for many years of the peace, skeleton regiments of Militia officers, without any rank or file. Fresh commissions were given from time to time as a kind of honorary distinction, without their being intended to have any other present operation. The ballot lists still remain

* A similar course was taken in Ireland and Scotland by the general Militia (Irish and Scotch) Acts, now amended by 17 and 18 Vic. c. 107 and 106, respectively.

† Preface to Saunders' Militia Acts.

suspended by the usual annual suspension; but the present Militia has been called into operation by a system of voluntary enlistment, which has entirely, for the present at least, superseded the necessity of the ballot.

The Militia was, until lately, said to be disembodied; that is, liable only to be called out for periodical training and exercise, but not into active service; some regiments are, however, in active service, the whole regiment having offered to serve. The regiments in active service on garrison duty were regiments that had volunteered *en masse.*

Embodiment of the Militia.

The Militia of the United Kingdom can only be drawn out, or embodied for service, in England and Scotland respectively, in cases of actual invasion or upon imminent danger thereof, or in cases of rebellion or insurrection; and in Ireland, in cases of actual invasion, rebellion, or insurrection, or upon immediate danger thereof; or in the *whole* United Kingdom whenever a *state of war* exists between Her Majesty and any foreign power.*

Before embodying the Militia, the occasion must first be communicated to Parliament, if Parliament is then sitting; or declared in Council, and notified by proclamation, if no Parliament is sitting at the time, or in being. Further, whenever the Queen causes the Militia to be drawn out and embodied, if Parliament is then separated by an adjournment or prorogation that will not expire within fourteen days, the Queen *may and shall* issue a proclamation for the meeting of Parliament within fourteen days; and Parliament must accordingly meet and sit upon the day appointed by the proclamation, and continue to sit and act in like manner, to all intents and purposes, as if it had stood prorogued or adjourned to the same day.†

Before the late act for the improvement of the Militia,

* 17 Vic. c. 13, sec. 1.

† 42 Geo. III. c. 90, secs. 111 and 113.

the Militia, when called out for training or embodiment, was organised and divided into regiments, battalions, or corps, under a very complicated statutary system; but as that was found very inconvenient, the Crown now has the entire discretion as to forming the Militia into regiments, and the numbers of officers appointed to them.* In Ireland this power rests with the Lord Lieutenant.†

Militia raised by Voluntary Enlistment.

When, however, it was thought necessary, under the circumstances of continental policy, again to call out the Militia, it was deemed expedient, in order to fulfil the purposes of the Militia with as little disturbance as possible to the ordinary occupations of the people, to raise the Militia to active operation by voluntary enlistment.

* Her Majesty, by order signified by one of Her principal Secretaries of State, from time to time directs the Lord Lieutenants to form the Militia of their several counties into such companies, regiments, battalions, or corps, as to Her Majesty may seem fit, and to direct what number of officers, and of what respective ranks, shall be appointed thereto, and what shall constitute the staff thereof; and, where the number of militia men required to be raised for any county appears to Her Majesty insufficient to be conveniently formed into a separate regiment, battalion, or corps, to direct the Militia of such county to be united with the Militia of any county adjoining; but, save where Her Majesty otherwise directs, the Militia of the several counties shall be formed into such companies, regiments, battalions, or corps, with such officers and staff, as directed by the General Militia Acts.* As, however, the Militia forces have been divided by royal order upon the full quotas, and in all probability the old system will not again be resorted to, it is not necessary to detail it here.

It is proposed that in future no regiment shall have more than three Field Officers. But as several of the old regiments have a Colonel, a Lieutenant-Colonel, and two Majors—one of the latter will be considered supernumerary; and when a vacancy occurs in the rank of Colonel, if filled up after the 29th March, 1853, the appointment will be honorary only, and the second Major will become effective. In the same manner, if one of the majorities should become vacant before the Colonelcy, that majority will not be filled up The Non-Commissioned Officers include the permanent Staff. The following Table exhibits the full quotas of the several counties, as directed by the Militia Acts.

† 17 and 18 Vic. c. 107, sec. 3.

* 43 Geo III. c. 90; 10 Geo. IV. c. 10, sec. 3; 17 and 18 Vic. c. 106, sec. 28.

For the purpose of raising the number of men required, the Lord-Lieutenants of the counties in England, in the

Establishment of Regiments of Militia in England and Wales, upon the Full Quota of 80,000 Men.

Regiments marked thus (*) are Rifle Corps.
Newly-raised Regiments are printed in a blacker type.

Corps.	Colonels.	Lieut.-Colonels.	Majors.	Captains.	Lieutenants.	Ensigns.	Adjutants.	Surgeons.	Assistant-Surg.	Quarter-Masters.	Serjeant-Majors.	Serjeants.	Corporals.	Drummers.	Privates.
Bedford, Light Infantry	1	1	1	6	6	6	1	1	1	-	1	18	18	5	555
Berks, Royal	1	1	1	8	8	8	1	1	1	-	1	26	26	6	777
Bucks, Royal	1	1	1	8	8	8	1	1	1	-	1	25	25	6	749
Cambridge	1	1	1	8	8	8	1	1	1	-	1	28	28	6	830
Cheshire, Royal 1st Regt.	1	1	1	10	10	10	1	1	1	1	1	33	33	7	1000
Royal 2nd Regt.	-	**1**	**2**	**10**	**10**	**10**	**1**	**1**	**1**	**1**	**1**	**35**	**35**	**7**	**1049**
*Cornwall Rangers	1	1	1	10	10	10	1	1	1	1	1	34	34	7	1017
* **Rifles**	-	-	-	**2**	**2**	**2**	**1**	**1**	-	-	**1**	**7**	**10**	**2**	**200**
Miners' Artillery	-	1	1	4	4	4	1	1	-	-	1	12	12	3	362
Cumberland, Royal	1	1	1	8	8	8	1	1	1	-	1	29	29	6	876
Derby, 1st Regiment	1	1	1	8	8	8	1	1	1	-	1	27	27	6	800
2nd Regiment	-	**1**	**1**	**6**	**6**	**6**	**1**	**1**	**1**	-	**1**	**19**	**19**	**5**	**567**
Devon, 1st or East Regt.	1	1	1	10	10	10	1	1	1	1	1	33	33	7	1000
2nd or South Regt.	1	1	1	10	10	10	1	1	1	1	1	33	33	7	1000
Artillery	-	**1**	**1**	**4**	**4**	**4**	**1**	**1**	-	-	**1**	**12**	**12**	**3**	**367**
Dorset	1	1	1	8	8	8	1	1	1	-	1	27	27	6	814
Durham, 1st or South Regt.	1	1	1	8	8	8	1	1	1	-	1	27	27	6	800
2nd, or North Regt.	-	**1**	**2**	**8**	**8**	**8**	**1**	**1**	**1**	-	**1**	**27**	**27**	**6**	**800**
Artillery	-	-	-	**2**	**2**	**2**	**1**	**1**	-	-	**1**	**5**	**5**	**2**	**162**
*Essex, 1st Regiment	1	1	2	8	8	8	1	1	1	-	1	28	28	8	846
2nd Regiment	1	1	1	8	8	8	1	1	1	-	1	28	28	6	840
Gloucester, Royal 1st or South Regt., Light Inf.	1	1	1	10	10	10	1	1	1	1	1	33	33	7	1000
Gloucester, 2nd or North Regt.	1	1	1	10	10	10	1	1	1	-	1	33	33	7	993
Hampshire Regiment.	1	1	1	10	10	10	1	1	1	1	1	36	36	7	1100
Artillery	-	**1**	**1**	**5**	**5**	**5**	**1**	**1**	**1**	-	**1**	**16**	**16**	**3**	**500**
Isle of Wight Artillery	-	-	-	2	2	2	1	1	-	-	1	4	4	2	136
Hereford	1	1	1	6	6	6	1	1	1	-	1	18	18	5	538
Hertford	1	1	1	8	8	8	1	1	1	-	1	25	25	6	766
*Huntingdon	-	1	-	3	3	3	1	1	-	-	1	10	10	3	296
Kent, 1st Regiment	1	1	1	10	10	10	1	1	1	1	1	33	33	7	1000
2nd Regt. Lt. Infantry	1	1	1	10	10	10	1	1	1	1	1	33	33	7	1000
Artillery	-	**1**	**1**	**6**	**6**	**6**	**1**	**1**	**1**	-	**1**	**20**	**20**	**5**	**600**
Lancashire, Royal 1st Regt.	1	1	1	12	12	12	1	1	1	1	1	40	40	8	1200
Royal, 2nd Regt	1	1	1	12	12	12	1	1	1	1	1	40	40	8	1200
Royal, 3rd Regt.	1	1	1	12	12	12	1	1	1	1	1	40	40	8	1200
Royal, 4th Regt. L.I.	-	**1**	**2**	**12**	**12**	**12**	**1**	**1**	**1**	**1**	**1**	**40**	**40**	**8**	**1200**
Royal, 5th Regt.	-	**1**	**2**	**12**	**12**	**12**	**1**	**1**	**1**	**1**	**1**	**40**	**40**	**8**	**1200**
6th Regt.	-	**1**	**2**	**12**	**12**	**12**	**1**	**1**	**1**	**1**	**1**	**40**	**40**	**8**	**1200**
7th Regt.	-	**1**	**2**	**12**	**12**	**12**	**1**	**1**	**1**	**1**	**1**	**40**	**40**	**8**	**1200**
Royal Artillery	-	**1**	**2**	**6**	**6**	**6**	**1**	**1**	**1**	-	**1**	**21**	**21**	**5**	**646**
Leicester	1	1	1	10	10	10	1	1	1	1	1	35	35	7	1045
Lincoln, Royal, North	1	1	1	10	10	10	1	1	1	-	1	31	31	7	943
Royal, South	1	1	1	10	10	10	1	1	1	-	1	31	31	7	943
Middlesex, 1st or Royal East Regiment	1	1	1	10	10	10	1	1	1	1	1	35	35	10	1050
*2nd or Edmonton Royal Rifle Regiment.	1	1	1	10	10	10	1	1	1	1	1	35	35	10	1050
3rd, or Royal Westminster Light Infantry Regiment	1	1	1	10	10	10	1	1	1	1	1	34	34	7	1039
4th, or Royal South Regt.	-	**1**	**2**	**10**	**10**	**10**	**1**	**1**	**1**	**1**	**1**	**33**	**33**	**7**	**1000**

year one thousand eight hundred and fifty-two and in the year one thousand eight hundred and fifty-three, were to

Corps.	Colonels.	Lieut-Colonels.	Majors.	Captains.	Lieutenants.	Ensigns.	Adjutants.	Surgeons.	Assist-Surgeons.	Quarter-Masters.	Serjeant-Major.	Serjeants.	Corporals.	Drummers.	Privates.
5th, or Royal Elthorne Light Infantry Reg	-	1	2	10	10	10	1	1	1	1	1	33	33	7	1000
City of London Royal	1	1	1	10	12	8	1	1	1	-	1	20	20	7	600
King's Own Light Infantry, or 1st Tower Hamlets	1	1	1	10	10	10	1	1	1	1	1	38	38	7	1159
Queen's Own Light Infantry, or 2nd Tower Hamlets	1	1	1	10	10	10	1	1	1	1	1	38	38	7	1159
Monmouth, Royal Lt. Inf.	1	1	1	8	8	8	1	1	1	-	1	25	25	6.	750
Norfolk, 1st or West Regt.	1	1	1	10	10	10	1	1	1	-	1	30	30	7	900
2nd or East Regt.	1	1	1	10	10	10	1	1	1	-	1	30	30	7	900
Artillery	-	-	-	**2**	**2**	**2**	**1**	**1**	-	-	**1**	**6**	**6**	**2**	**168**
Northampton	1	1	1	10	10	10	1	1	1	-	1	32	32	7	974
Northumberland, Lt. Inf.	1	1	1	12	12	12	1	1	1	1	1	40	40	8	1200
Artillery	-	-	-	**2**	**2**	**2**	**1**	**1**	-	-	**1**	**5**	**5**	**2**	**140**
Notts	1	1	1	12	12	12	1	1	1	1	1	40	40	8	1223
Oxford	1	1	1	8	8	8	1	1	1	-	1	26	26	6	773
Rutland, Light Infantry	-	-	-	1	1	1	-	1	-	-	1	3	3	1	109
Salop	1	1	1	10	10	10	1	1	1	1	1	35	35	7	1058
Somerset, 1st Regiment	1	1	1	10	10	10	1	1	1	-	1	32	32	7	973
2nd Regiment	1	1	1	10	10	10	1	1	1	-	1	32	32	7	973
Stafford, 1st or King's Own Regiment.	1	1	1	10	10	10	1	1	1	-	1	32	32	7	967
2nd, or King's Own Light Infantry Reg.	**1**	**1**	**1**	**10**	**10**	**10**	**1**	**1**	**1**	**-**	**1**	**32**	**23**	**7**	**950**
***3rd, or King's Own Rifle Regt.**	-	**1**	**2**	**10**	**10**	**10**	**1**	**1**	**1**	-	**1**	**32**	**32**	**10**	**950**
Suffolk	1	1	1	10	10	10	1	1	1	1	1	33	33	7	1000
Artillery	-	**1**	**1**	**5**	**5**	**5**	**1**	**1**	**1**	-	**1**	**17**	**17**	**3**	**526**
Surrey, Royal 1st Regiment	1	1	1	10	10	10	1	1	1	-	1	33	33	7	997
Royal 2nd Regiment	1	1	1	10	10	10	1	1	1	-	1	33	33	7	990
Royal 3rd Reg	-	**1**	**2**	**10**	**10**	**10**	**1**	**1**	**1**	-	**1**	**33**	**33**	**7**	**990**
Sussex, Royal 1st Reg, L.I.	1	1	1	10	10	10	1	1	1	1	1	34	34	7	1018
Royal Artillery	-	**1**	**1**	**5**	**5**	**5**	**1**	**1**	**1**	-	**1**	**16**	**16**	**3**	**500**
Warwick, 1st Regiment	1	1	1	10	10	10	1	1	1	1	1	36	36	7	1074
2nd Regt.	**1**	**1**	**1**	**10**	**10**	**10**	**1**	**1**	**1**	**1**	**1**	**36**	**36**	**7**	**1076**
Westmorland, Royal Light Infantry	-	1	-	3	3	3	1	1	-	-	1	9	9	3	260
Wilts, Royal	1	1	1	10	10	10	1	1	1	1	1	39	39	7	1166
Worcester	1	1	1	12	12	12	1	1	1	1	1	41	41	8	1267
York, E. R.	1	1	1	10	10	10	1	1	1	-	1	32	32	7	977
N. R.	1	1	1	10	10	10	1	1	1	1	1	33	33	10	1002
*W. R. 1st Regiment	1	1	1	10	10	10	1	1	1	1	1	34	34	7	1040
W. R. 2nd Reg. Lt. In.	1	1	1	10	10	10	1	1	1	1	1	34	34	7	1036
W. R. 3rd Reg. Lt. In.	1	1	1	10	10	10	1	1	1	1	1	34	34	7	1036
4th Reg.	-	**1**	**2**	**10**	**10**	**10**	**1**	**1**	**1**	**1**	**1**	**34**	**34**	**7**	**1036**
5th Reg.	-	**1**	**2**	**10**	**10**	**10**	**1**	**1**	**1**	**1**	**1**	**34**	**34**	**7**	**1036**
6th Reg.	-	**1**	**2**	**10**	**10**	**10**	**1**	**1**	**1**	**1**	**1**	**34**	**34**	**7**	**1036**
Anglesey, Royal Light Inf.	-	1	-	3	3	3	1	1	-	-	1	8	8	2	256
*Brecon, Royal	-	1	-	3	3	3	1	1	-	-	1	9	9	3	286
*Cardigan, Royal	-	1	-	3	3	3	1	1	-	-	1	10	10	3	301
*Carmarthen, Royal	-	1	1	6	6	6	1	1	-	-	1	16	16	6	486
*Carnarvon, Royal	-	1	1	4	4	4	1	1	-	-	1	13	13	4	388
*Denbigh, Royal	-	1	1	4	4	4	1	1	-	-	1	14	14	4	432
*Flint, Royal	-	1	1	3	3	3	1	1	-	-	1	10	10	3	316
Glamorgan, Royal Lt. In.	-	1	2	10	10	10	1	1	1	1	1	36	36	7	1086
*Merioneth, Royal	-	-	1	2	2	2	1	1	-	-	1	6	6	2	176
*Montgomery, Royal	-	1	1	3	3	3	1	1	-	-	1	10	10	3	312
Pembroke, Royal Artillery.	-	1	1	4	4	4	1	1	-	-	1	13	13	2	384
*Radnor, Royal	-	-	-	2	2	2	1	1	-	-	1	4	4	2	119

direct their Deputy-Lieutenants, or the Colonels or Commanding Officers of the several corps of Militia of their counties, without delay, to raise and enrol *volunteers* (by beat of drum or otherwise*) to serve for the term of five years; and such Deputy Lieutenants, Colonels, or Commanding Officers, and the commissioned and non-commissioned Officers of the Militia, duly authorised by such Colonels or Commanding Officers, forthwith proceed to raise volunteers, resident in the county, or in any county immediately adjoining, being able-bodied men, between such ages and of such height as shall be from time to time fixed by regulations made by Her Majesty's Secretary-at-War, and for such bounties or other payments as shall be from time to time authorized by such regulations.† The system of volunteering was, however, anything but new to the Militia; substitutes for ballotted men were of course volunteers, and in Ireland special provision had been made that vacancies which should occur, when a force had been raised to one hundred rank and file per company, should be filled by volunteers, and not by ballotted men.‡

Volunteers to be raised for supplying the places of men whose time is about to expire, and for supplying vacancies by death, &c.

And in order to keep up this Militia at its full force, the Deputy Lieutenants or Commanding Officers of Militia are from time to time, and so long before the expiration of the respective terms of service of the men belonging to their respective corps, as directed by regulations of the Secretary-at-War, to raise and enrol, or cause to be raised and enrolled volunteers to supply such vacancies; and the Colonels

* Under the ancient Acts, beating drums for Militia volunteers was illegal, but this prohibition has long been done away with.

† The Lord-Lieutenants proceed on an order of Privy Council, both in Great Britain and Ireland; 15 and 16 Vic. c. 50; 17 and 18 Vic. c. 107, sec. 11, and c. 106, sec. 29.

‡ 49 Geo. III. c. 120, sec. 139.

or Commanding Officers from time to time, subject to any regulations to be so made, raise and enrol, or cause to be raised and enrolled, volunteers for supplying casual vacancies by reason of militia-men dying before the expiration of their term of service, or being promoted to be non-commissioned officers or drummers (except where they are so promoted in the room of non-commissioned officers or drummers reduced to the ranks,) or being discharged as unfit for service, or in pursuance of the sentence of a court-martial, or having deserted.*

Where men cannot be raised by voluntary enlistment Her Majesty in Council may order a ballot.

In case it appeared to Her Majesty, after the thirty-first of December in the year one thousand eight hundred and fifty-two, that the number of men required in such year for any county could not be raised by voluntary enlistment; or if in any subsequent year the number of men for the time being to be raised for any county, for keeping up the full number of men appointed to be raised and kept up, cannot be raised as volunteers; or in case of actual invasion or imminent danger thereof, Her Majesty may, by order in Council, if it appear to her advisable so to do, order and direct that the number of men so required to be raised shall be raised by ballot.†

General Meetings to apportion deficiencies among subdivisions and parishes.

Whenever, by such order in Council, any men are required to be raised for any county, by ballot, the Lieutenant and Deputy Lieutenants of that county, assembled at a general meeting to be held for that purpose, ascertain how many of

* In Scotland, the volunteers are not raised until a time appointed by an Order in Council, and the enlistment is by the officer, in the first instance, assisted by the deputy. 17 and 18 Vic. c. 106, sec 29.

† In Ireland, if the required number of any county is not raised by enlistment, the Lord-Lieutenant of Ireland may authorize and direct the number deficient to be raised by voluntary enlistment in any county that has provided its full quota. 17 & 18 Vict. c. 107, sec. 12.

the private men for the time being serving in the Militia of such county were at the time of their being enrolled resident in each of the subdivisions and parishes thereof, and apportion the number required to be raised by ballot among the several subdivisions and parishes of such county; and make such apportionment as near as may be according to the number of men fit and liable to serve in the Militia resident in such subdivision and parishes *respectively*, giving credit to each subdivision and parish for the private men for the time being actually serving, and who at the time of being enrolled were resident in such subdivisions and parishes respectively; and where the number of private men serving, and at the time of being enrolled, resident in any subdivision or parish, amounts to the full number of men which, (upon a just apportionment of the whole number required to serve for such county, riding, or place, among the several subdivisions and parishes thereof, according to the number of men fit and liable to serve in the Militia resident therein respectively,) ought to be furnished by any such subdivision or parish. No proceeding for or in relation to a ballot can be had for such subdivision or parish; but the men required to be raised by ballot shall be apportioned among the other subdivisions or parishes as hereinbefore mentioned; and the number of men apportioned under this provision are to be raised by ballot in the subdivisions and parishes to which they are so apportioned accordingly; and such general meetings are to do all acts necessary for causing such men to be raised by ballot, with all convenient speed.

Subdivisions and parishes in which the full number of Volunteers has been raised to be wholly exempt.

Registrar-General may be directed to furnish information to

The Registrar-General is, when directed by one of Her Majesty's principal Secretaries of State, to furnish to the Lieutenants of the counties, from the returns made to him

and other documents in his custody or power, information or estimates as the Secretary of State may direct, of the number of men fit and liable to serve in the subdivisions and parishes of the several counties, for the guidance of the Lieutenants and their Deputy-Lieutenants, in apportioning the number of men required to be raised by ballot; and the Lieutenants and Deputy-Lieutenants, in making such apportionments, must act upon the information or estimates so furnished.

Lieutenants of counties for their guidance in making apportionments.

In this method, then, the modern Militia is to be kept up; and the Queen, under the advice of her Privy Council, may, under this plan, raise and keep up in England any number not exceeding 80,000 private militia-men; *fifty thousand* were to be raised in 1852, and *thirty thousand more* in 1853; with a provision that if the number of men raised in either year should not be fully raised in the year appointed, the number deficient might be raised as soon thereafter as possible.* In Scotland the number is 10,000; and in Ireland, 30,000.†

The Militia is raised according to certain *quotas*, or proportion for each county. These were formerly determined under a very complicated system, but they are ascertained and fixed by an order in Council, which holds good until any subsequent order changes them.‡ The present Order in Council, fixing the quotas of Militia to be raised in the several counties, ridings, and places, in England and Wales, was published at Buckingham Palace, the 30th of June, 1852.§

Quotas.

* 15 and 16 Vic. c. 50, sec. 2.

† 17 and 18 Vic. c. 106, sec. 26; Idem, c. 107, sec. 1.

‡ 15 and 16 Vic. c. 50, sec. 9; 17 and 18 Vic. c. 106, sec. 27; Idem, c. 107, sec. 2.

§ The quotas are given on the page following.

In times of peril, Militia may be raised to 120,000.

Although the number of men is thus limited as a peace establishment, in England, in case of actual invasion or imminent danger thereof, or in a state of war (the reason being first communicated to Parliament, or if Parliament is not sitting declared in Council, and notified by proclamation), the Queen, by her royal proclamation, may order the

QUOTAS.	Number to be raised in 1852.	Number to be raised in 1853.	Total Number to be raised.
ENGLAND.			
Bedford	345	210	555
Berks	483	294	777
Bucks	466	283	749
Cambridge	520	316	836
Chester	1,275	774	2,049
Cornwall, exclusive of the Stannaries	757	460	1,217
The Stannaries	225	137	362
Cumberland	545	331	876
Derby	851	516	1,367
Devon, exclusive of the Stannaries	1,473	894	2,367
The Stannaries (See Cornwall.)			
Dorset	506	308	814
Durham	1,096	666	1,762
Essex	1,049	637	1,686
Gloucester	1,240	753	1,993
Hereford	335	203	538
Hertford	477	289	776
Huntingdon	184	112	296
Kent	1,618	982	2,600
Lancaster	5,628	3,418	9,046
Leicester	650	395	1,045
Lincoln	1,174	712	1,886
Middlesex, exclusive of the city of London and Tower Hamlets—	3,197	1,942	5,139
City of London	* 600	. .	600
Tower Hamlets	1,442	876	2,318
Monmouth	467	283	750
Norfolk	1,224	744	1,968
Northampton	606	368	974
Northumberland	834	506	1,340
Nottingham	761	462	1,223
Oxford	481	292	773
Rutland	68	41	109
Salop	658	400	1,058
Somerset	1,211	735	1,946

* Act 1 Geo. III. c. 100.

numbers of the Volunteer Militia to be raised to any number not exceeding 120,000, who are to be raised, enrolled, and embodied, precisely as the other volunteers, and trained and exercised under the same powers. When the danger passes, Her Majesty may again, by proclamation, reduce the numbers.* But when the Queen so raises the additional number of men, she must, (if Parliament is separated for a period that will not expire within fourteen days,) assemble Parliament within fourteen days from the date of the proclamation of increase;† and Parliament will assemble and sit

QUOTAS.	Number to be raised in 1852.	Number to be raised in 1853.	Total Number to be raised.
Southampton	1,080	656	1,736
Stafford	1,784	1,083	2,867
Suffolk	949	577	1,526
Surrey	1,852	1,125	2,977
Sussex	945	573	1,518
Warwick	1,336	812	2,148
Westmorland	167	102	269
Wilts	725	441	1,166
Worcester	789	478	1,267
York, East Riding	608	369	977
York, North Riding and City	733	445	1,178
York, West Riding	3,760	2,284	6,044
WALES.			
Anglesey	159	97	256
Brecon	178	108	286
Cardigan	187	114	301
Carmarthen	302	184	486
Carnarvon	241	147	388
Denbigh	269	163	432
Flint	197	119	316
Glamorgan	676	410	1,086
Merioneth	110	66	176
Montgomery	194	118	312
Pembroke	239	145	384
Radnor	74	45	119
Total	50,000	30,000	80,000

The Author is not aware if the quotas for Ireland and Scotland have been determined; on determination they are directed to be published in the Edinburgh and Dublin Gazettes respectively.

* 15 and 16 Vic. c. 50, sec. 30. † 15 and 16 Vic. c. 50, sec. 31.

as if for general business. No ballot, nor any proceedings in relation to ballot, can be had except by order of the Queen; and the men raised as volunteers are in substitution for, and not in addition to the Militia, formerly raised by ballot.

The Ballot.

The system of the Ballot is regulated by the General Militia Act, as amended by subsequent acts. The system is very complicated. A general outline only is given here; but those readers who are curious for more accurate information, will find a very minute Digest of the statutes at the end of this Chapter.

The ballot is carried in effect by the Lieutenancy of each county, which operates through two classes of meetings—general meetings and sub-divisional meetings. The former consists of the whole Lieutenancy—that is, the Lord and his deputies; the latter, of such deputies and justices as are appointed for each sub-division—the sub-divisions being the ancient hundreds, rapes, and wapentakes, or such others as are appointed by the Crown under late statutes.*

General Meetings.

In each county, the Lord-Lieutenant and his deputies in general meeting† establish the contingents of sub-divisions. At the day appointed, the chief-constables, head-boroughs, or other municipal officers, receive from the Lord-Lieutenant, and notify to all heads of families, an order to prepare and produce within a fortnight, a list of the names of the males between eighteen and thirty-five years of age; with a statement, in the margin, of the reasons upon which any of them plead an exemption from Militia service. One month afterwards, the officers must be prepared with a general list of the individuals who are of age for service,

* But see Digest, *post.* p. 282, *et seq.*

† The general meetings have other powers beside those relating to ballot, for which the reader is referred to the Digest that follows this section.

their rank, profession, and objections. This list is affixed to the doors of the parish churches and other places of public worship, together with a notice of the sub-division meeting appointed to judge upon these objections; to hear information against wilful or fraudulent omissions in the preparatory lists, &c. The decisions being made upon the general list of the sub-division, it is closed; signed by the deputies at the time, addressed by the secretary of the sub-division to the clerk of general meeting; and by him forwarded to the Secretary of State for the Home Department, to be laid before the Privy Council. In a second meeting the Deputy-Lieutenants make the division of the contingents of the respective parishes in the sub-divisions. In a third meeting, they proceed to the drawing from among all the men between eighteen and thirty-five years of age, not comprised in the list of those excepted. A surgeon examines the men that are drawn, and upon his report, they are rejected or received without further delay.

Exemptions.

Peers, the military of all ranks, yeomanry, volunteers, and militia-men, who have served personally or by substitutes, until their turn comes round, certain members of all the universities and certain chartered colleges, ecclesiastics of all protestant creeds, masters of chartered schools, magistrates, most of the civil servants of the Government, such as officers in the post office, apprentices to any art, attorneys, mariners, and labourers in the maritime trades, are exempted from the ballot; and lastly, such of the poor as have more than one legitimate child; every individual may even be rejected from the rank of a simple private soldier, if he has not one hundred pounds sterling of property.* Quakers

* It is probable that if the ballot were again put in force this provision would be repealed; it no doubt arose from the jealousy of placing arms in the hands of the populace during the time of the Georges.

refusing to bear arms upon a religious principle, can be replaced, if it falls to their lot to be drawn in the ballot; but as they refuse also to pay for the substitution, upon another religious feeling, the law prescribes that their property shall be seized for the purpose, and this mode is generally effectual in producing payment; but if their property is too small, they cannot now be imprisoned for default.

In a country where the principle of association applies to every want, to all extraordinary circumstances of business and life, as it does in England, this application has been even extended to the procuring of substitutes for the Militia. To be exempted from the ballot, the last time it was used, some insured themselves in companies, while others formed clubs, to defray, at their common expense, the charge of procuring substitutes for such of their numbers as were drawn to serve. In these cases the substitutions took place by voluntary enlistments. The parishes, to avoid the ballot, or at least to diminish its chances, have received the power of furnishing men who volunteer to serve. The parish officers can give bounties for this purpose to the amount of £6 per man, and can tax the inhabitants to discharge this expense; provided the measure be previously consented to by a majority of them.

Classes. The Militia, for the purposes of the ballot, are divided into classes, in the following manner:—

Class.	Age.	No. of Children.
1	18 to 30	None.
2	30 „ 35	None.
3	18 „ 35	None under 14 years of age.
4	18 „ 35	One under 14 years of age.
5	18 „ 35	Two or more under 14 years of age.

When only a part of the Militia is called into active service out of the county, the first class is taken primarily, then the second, afterwards the third, &c. "It is worthy of observation," says M. Dupin, "that, in this classification the legislature looks only to children under fourteen years of age; it supposes that the others, put out to apprenticeship, have ceased to be a charge upon their parents. No man is admitted as a substitute for another if he has more than one child."

Replacing Vacancies.

The replacing of militia-men who have completed their five years of service, is effected annually, under the forms which have been issued on the twentieth of November. When there are vacancies to be filled, which have been caused by the death or the invaliding of militia-men, or by any other cause, the Deputy-Lieutenants must make a new ballot in the parishes of such men. "It would be more simple," says the author last cited, "as in France, to summon the individuals, who, according to their number on the roll, immediately follow those drawn on the last ballot."

In an operation so complicated, so important as that of enrolments for the Militia by ballot, personal interest will try every possible mode of eluding the law: this has been foreseen, in fixing numerous penalties and fines for all contraventions of the statutes, and all frauds committed by the persons liable to serve in the Militia, or by municipal officers; the proceeds from such fines serve to pay for substitutes, whether from the community, or for persons who have illegally absconded from the service, and evaded all pursuit.

Training and Exercise.

The disembodied Militia are (unless the Queen otherwise directs) called out once in each year, to be trained and

exercised, for the space of twenty-one days; but when the corps is actually assembled, the Queen may order this period, at any time while the corps is training, to be extended to fifty-six days, so that the *whole* period occupied in one training does not exceed fifty-six days; the time of any drill that any officers or privates may have been undergoing at head quarters, or with the regular forces, not being reckoned in.

Under the above provisions, the Militia may be called out more than once a year, so that the whole time (unless extended as above by royal order) does not exceed twenty-one days. When any regiment is disembodied, the Queen may relieve it by ordering it not to be trained for twelve months.

Besides the power of extending the time, the Crown has also authority to move any Militia, during its training, to any part of the kingdom; so that any body or company of Militia may be brought together for the purpose of practising united movements of large bodies of troops. Also, for the convenience of training, grounds may be hired by the Lords-Lieutenants, under the approbation of a Secretary of State; or in Ireland appointed by the Lord-Lieutenant, for the purpose of exercise and training.

During the time of training, the Militia are under the Annual Mutiny Act and the Articles of War; and any officer commanding any corps of Militia out for exercise and training, provided he is not under the rank of Captain, may order the proper Court-Martial for the trial of any offence committed during and under his command. No offender, however, is liable to be punished for any offence (except desertion) after being dismissed from training, unless the charge is brought against him within six months from the date of dismissal.

Formerly the time and place of exercise were appointed

by meetings of General-Lieutenancy; but now, unless by special order of one of the Secretaries of State, they are appointed by the Lord-Lieutenant of the county, under the approbation of the Crown; notices for this purposes are sent to the men by post, and also placed on the church doors.

Provision is made by statute for the relief of militia-men who may fall sick on their way to and from the place of training; and in order to house and lodge them, the magistrates and other proper officers are required to billet the Militia, called out for annual exercise, and substantially, in the same manner as the Queen's forces are directed to be billetted. The justices are also bound to issue their warrants, when properly required, for impressing the carriages, waggons, &c., necessary for the transport of the *materiel* of the Militia.

Discipline

Besides the militia-men being under the Mutiny Act and Articles of War, the Militia Acts make other provisions for good conduct at exercise. Any militia-man (not labouring under any physical infirmity that incapacitates him) not joining, or after joining absenting himself, or deserting, is deemed a deserter; and if not taken until after the time of drill, forfeits £10, or is liable to three months' imprisonment. If they are not taken within three months, their places are filled by a fresh ballot; but such men, when taken, are still compelled to serve, as if no persons had been chosen in their room.

Again; any person on the permanent staff of the disembodied Militia may be tried by a Court-martial for offences against the Militia laws, as may also persons deserting from the *embodied* militia, and not taken until after the same was disembodied. This court may be formed of Militia Officers resident in the county where the trial is to take

place, and its sentence requires confirmation from the Commanding Officer who summoned the court. A Court-martial of Militia may sentence a non-commissioned officer to be reduced to the condition of a private, and to serve as such until regularly discharged, unless at any time re-appointed to his rank.

Arms. To preserve the arms of the regiment, the muskets are marked with the letter M, and if the men do not return them to the proper person, in good order, they are liable to be fined £3, or to be imprisoned for three months. Further; to protect the *materiel* of the Militia, any person knowingly and wilfully buying or otherwise receiving any Militia arms or stores, is liable to a penalty of £10, or six months' imprisonment, with or without hard labour.

Pay. The pay of the disembodied Militia is regulated by the Militia Pay Act, and it commences on the day of joining for exercises; an allowance being made to those prevented from joining by sickness or other cause.*

Active Service. The method of calling out the Militia for embodiment has been described above. When any Militia is embodied it is governed and organized entirely on the model of a regiment of the Queen's regular forces, but kept quite distinct from those forces; Militia Officers not being even permitted to sit on the Courts-martials held on any officer or soldier of the regular forces, and *vice versâ*.

When the Militia is embodied they take all disabilities, and many of the privileges of regular soldiers; and as they can now be sent abroad there is very little real distinction.

* 15 & 16 Vic. c. 74. Applicable both to Great Britian and Ireland.

Men not joining are deemed deserters under the Mutiny Act and Articles of War; and on the other hand, if maimed or wounded *in actual service*, they obtain a right to the benefit of Chelsea and Kilmainham Hospitals.

An allowance of marching money is made to the men, to enable them to join the embodied regiment; and the pay of men and officers commences from the day of joining. They receive the same pay as the regular infantry, with the exception, that if at any time the pay of the infantry is increased, that increase does not apply to the Militia. An agent, secured on the usual terms, is appointed to each embodied regiment, and one guinea per man is advanced by the Receiver-General to each Captain, for necessaries for his company.

When the regiment is serving out of its county, any private whose term of service is within four months of expiry, may volunteer to continue in the service; and if his service is continued more than five years beyond the time of his enrolment, he is entitled to receive a bounty.

There are many other provisions in the Militia Acts for procuring volunteers and substitutes for ballotted men; for which the reader is referred to the Digest before mentioned, as well as for those enactments for compelling counties to keep their Militia forces to the full quotas.

Foreign Service.

This sketch of the Militia will now close with a short account of that entirely new feature in the organization of the Militia—"The Act for enabling Her Majesty to accept the services of the Militia out of the United Kingdom, for the vigorous prosecution of the War."*

Though this Act professes in its title and preamble to be

* 18 Vict. c. 1.

for the vigorous prosecution of the war, its effects will not immediately terminate with the war; for every volunteer for foreign service, swears "to serve in the Militia for the term of five years, unless sooner discharged." This oath is taken on volunteering for foreign service, in addition to the ordinary military oath.*

The Queen is empowered to accept the voluntary offers of any Militia, (not exceeding in any case three-fourths of the actual establishment of the corps) to serve out of the United Kingdom; and also has power to allow bounties (fixed by the Secretary-at-War) to all under rank of Commissioned Officer, who make such voluntary offers.†

The Queen, through the Commanding Officer of any corps, may propose foreign service; but the officer is first bound to explain to each person that the offer is voluntary.‡

The Queen may also accept the services of three Field Officers for 900 men, two for 600, and one for 300; and of a sufficient number of non-commisioned officers and drummers, according to the establishment of the corps. If a sufficient number of Field Officers do not volunteer, she may give the rank of Field Officer to any Captain volunteering.§

The Militia volunteering, are formed in provisional regiments, for the purposes of foreign service; and all officers who hold a higher rank in the provisional battalion or regiment than they hold in the Militia, are deemed to be Militia Officers of higher rank for the purposes of foreign service, and to be capable of commanding the provisional battalion; but no such officer can rank higher than Lieutenant-Colonel. In the event of sufficient officers not volunteering, the

* 18 Vict. c. 1, sec. 1.
† Idem, sec. 2.
‡ Idem, sec. 3.
§ Idem, sec. 4.

Queen may appoint officers, without regard to legal qualifications, but no person to a higher position than that of subaltern, who is not an officer in the army or militia. She may also supply vacancies in these appointments, so that she does not affect the appointment of officers as by law established, in case of vacancy.*

* 18 Vict. c. 1, secs. 5, 6, 7, 8, and 9.

Section II.

Volunteer Corps.

History. In a former Section a tolerably detailed account has been given of the method of raising the ancient feudal forces. In this assembly of the feudal tenants, the great barons, bishops, abbots, and other tenants holding *in capite* from the King, were warned to assemble both by a special and general summons. In the first place a royal mandate was addressed to the great tenants, but sent to the sheriffs of each county, to be personally served on those important personages. They were enjoined on their fidelity, as they regarded the King's honour, and the lands they held of him, to assemble with their due service of men and horses, at the time and place appointed. The inferior tenants or vassals were summoned by proclamation; but in cases of popular insurrection, rebellion, or apprehension of foreign invasion, where it was deemed necessary to collect a greater force than the feudal troops, the King issued his writ to the sheriff of those counties, whose forces it was thought expedient to array and embody, directing them to ride day and night through their districts, causing it to be proclaimed wherever they came, that all persons between the age of sixteen and sixty, not labouring under bodily disability, called defensible men, were commanded to join the King's army with all

possible speed, at a place appointed, competently armed according to their possessions, under pain of forfeiture of life and limb, and every other thing they could forfeit.*

Gradually out of this system arose a plan of voluntary enrolment. Stipendiary troops were thus raised by commissions, authorising persons to enlist volunteers; or by indenture: a practice which began about the end of the reign of Edward III, and became general in the reign of Henry V. By these indentures Englishmen and also foreigners contracted to provide a certain number of able men, properly armed, to serve the King for a stated period, and for a stipulated bounty and pay, then styled *wages and regards;* the indentures also contained covenants respecting prisoners of war, booty, and ransom: the latter forming no small portion of the enrolments. It was under such a system that the father of the gallant Earl of Essex re-established the English supremacy in Ireland. Although fighting for the Queen, Her Majesty only *lent* the money for the expedition, and afterwards nearly ruined the worthy nobleman with compound interest. There is a very curious correspondence on the subject in the British Museum.

These corps terminated their service, by right, on the return of peace. The first important corps of this nature was the Argyle county regiment, levied in 1759, to serve specially in that county only. Other regiments were raised in the same manner by voluntary enrolment, in 1778 and 1779, at an epoch when the war with the American Colonies assumed an aspect altogether unfavourable to Great Britain, and caused her to fear an invasion of her domestic dominions from France.

In the war with the French Republic, twelve regiments Fencibles.

* Grose's Military Antiquities, vol. i. p. 66.

of Fencibles were levied, whose services might be extended to the three kingdoms, and even beyond them. They were of great utility in the rebellion in Ireland, which preceded the Union. In the same contest, twenty-four regiments of cavalry and seventeen of infantry, enrolled voluntarily for defensive service only, offered to bear arms in any part of the British Empire.

The Colonels of Fencibles were the proprietors of their regiments, which they levied and organized in many instances at their own expense. They selected the officers under the approbation of the Crown. The Fencible officers ranked with those of the Militia, according to the dates of their commissions.

Sea-Fencibles.

During the war with the French Empire, companies of Volunteers were formed, specially destined to the guard and service of the batteries on the coast. These companies, which received the name of Sea-Fencibles, were levied in the maritime counties. From the places of their habitation, they were at hand on the spots where their services might be immediately required, on the attempt of an enemy to land.

Since the last war, regiments of Fencibles have no longer been levied in Great Britain. Fencible regiments were raised in the North American colonies during the late war, but approaching nearly in character to regular troops. They were enlisted to serve in any part of North America, and their officers ranked with those of the regular service. They were quite distinct from the embodied and sedentary militia of the Canadas.

Pardoned Criminals.

An expedient sometimes practised by our Kings was to pardon criminals, in order to procure troops for foreign service, on condition of their serving in the King's army abroad,

and finding security to answer any prosecution if called upon, at their return. Some of the King's justices were sometimes empowered to issue these pardons, and to receive the bonds of the criminals, after which they were allowed a small time to prepare for their voyage; they were then assembled by writs issued to the sheriffs of the different counties of England, directing them to cause it to be cried throughout their districts that all such as had charters of pardon should repair towards the sea, to enter into the pay and service of the King, at certain named seaports; so that they were there at a certain time, under penalty of losing their charters of pardon.*

Volunteer Infantry.

Under threats of invasion or other times of public danger, large bodies of Volunteers have been raised; indeed, nearly the whole able-bodied population have at all times been armed. When these troops take the field, or are charged with any post of defence, they pass immediately under the order of the Commander-in-Chief. In ordinary cases, however, they are under the authority of the Home Secretary; their charges and expenses enter into the department of the Secretary-at-War; their arming is entrusted to the Board of Ordnance.

The Lords-Lieutenants of the several counties command the Volunteers, as well as the Militia, in certain cases. Through them communications pass between these troops and the different branches of the ministry. They name the officers, subject to the approbation of the Crown. The levy and formation of troops or companies of battalions and regiments are also under their directions and that of the deputies.

Yeomanry.

The Volunteer corps are now however almost entirely

* Grose's Military Antiquities, p. 74.

composed of Yeomanry Cavalry, and consist of rather more than 14,000, at an expense of about £88,000.*

Privileges. The Volunteers are entitled to certain privileges. Effective members of Yeomanry or Volunteer corps are exempt from service in the Militia, or in any additional corps of reserve; though this does not extend to corps whose offers to the crown of their services specified that such exemption would not be claimed, or to those who have more than their proper establishment. Persons are deemed effective members who attend two days if cavalry,† and eight if infantry, in every four months, (unless disabled by sickness or on furlough,) preceding the 1st days of April, August, and December; on which days the Commanding Officers of each county are bound to make returns of their corps every four months, to the clerks of general meetings in their respective counties, of the non-effective and effective men in their corps.‡

The members are still exempt, even if unprovided with arms and accoutrements, provided they attend muster; or even if absent on leave, so that they attend duty the whole number of days within eight months. The Commanding Officer gives certificates of attendance to effective men residing in other counties.§

No tolls can be demanded for a horse ridden by a Volunteer going to exercise, provided he is dressed in the uniform of his corps, and has his arms and accoutrements, according to regulations. No effective member is liable to serve in the office of constable.‖

* Army Estimates, 1854.

† Making six days in one year. Five successive days also entitle a trooper to be returned as effective. 56 Geo. III. c. 39.

‡ 44 Geo. III. c. 54, secs. 4, 5, and 9.

§ Idem, sec. 10.

‖ Idem, sec. 13; 57 Geo. III. c. 44, sec. 3.

To claim exemption, however, as a Volunteer, it is necessary that the Commanding Officer shall have certified in the muster rolls of the corps that the corps has been or is ready to be inspected, by some General or Field Officer of the Queen's forces. The Commanding Officer and clerk of general meetings make the proper returns, under penalties for untruthfulness or neglect.*

In fixing the proportions of the subdivisions of men to serve in the Militia, the Volunteers exempted are deducted, and the proportions determined accordingly. Yeomanry and Volunteers are not however exempt from the ballot; but notice is given to them, if they are chosen, that they will become liable to serve if they leave the Volunteer corps. When they quit one corps for another, and have a certificate of attendance, if chosen to serve in the Militia of the subdivision of the second corps, they become wholly exempt as to the first.†

Volunteers and Yeomanry take the oath of allegiance.‡

Permanent Staff.

The permanent staffs, which consist of adjutants, serjeant-majors, drill-serjeants, serjeants, trumpeters, buglemen, drummers, and farriers, are under the Mutiny Act and Articles of War. Courts-martial are formed under the same plan as those for the permanent staff of the Militia; they cannot award any punishment which extends to life or limb, except where the corps is called out in cases of invasion, or on the appearance of an enemy on the coast. As in the Militia, officers of volunteers cannot sit on the trial of Regulars.§

* 44 Geo. III. c. 54, 12–15; Commanding Officer £200, Clerk of Meetings £50.

† Idem, secs. 16, 17, 18, and 19.

‡ Idem, sec. 20.

§ Idem, secs. 21, 25.

Duties. In all cases of actual invasion, or on the appearance of an enemy on the coast, or of rebellion or insurrection arising in the country, all corps of Yeomanry and Volunteers, on summons or signal, must assemble and march according to the terms of their services, and on neglect are deemed deserters. Corps so assembling or marching, as well as those voluntarily, on the appearance of danger, for exercise, to aid the civil power, or for any other military purpose, are subject during the time they are out to the Mutiny Act and Articles of War. When the corps is out, either on a signal of alarm or voluntarily, the Queen may place the corps under the command of General Officers, from time to time; but the corps has a right to be led by its own Regimental Officers, and there is no power to remove any man from one regiment to another.*

Volunteer and Yeomanry Officers rank with those of the regular and militia forces, as the youngest of their rank.

Discipline. When not under the authority of the Mutiny Act and Articles of War, the Volunteer corps are controlled by a power in the Commanding Officer to discharge members (when not on *actual* service, and not commissioned officers) for disobedience of orders, or to disallow any day of attendance, on which a member misconducts himself; or if the misconduct occurs during exercise, may order him into custody during the time the corps remains under arms.†

Quitting Corps. Volunteers and Yeomanry are entitled to quit their corps, when not summoned or assembled on actual service or voluntary military duty, on giving their Commanding Officer fourteen days' notice, and on delivering up their arms

* 44 Geo. III. c. 54, secs. 22, 23, 24, 26.

† Idem, secs. 27, 28, 29.

and paying all fines. They are also considered as discharged, if enlisted into the Queen's forces. Persons quitting their corps, except from the last cause, become again liable to serve in the Militia. Any person who thinks himself aggrieved by reason of his Commanding Officer refusing to strike his name out of the muster roll, after having given the proper notice to quit, has an appeal to two Deputy-Lieutenants, or one and a justice, whose determination is final.*

Maintenance.

With regard to the maintenance of these Volunteers, when called into military service, two guineas† per man is paid by the Secretary-at-War, to the Captain of each troop or company, to be laid out by the Captain for the troops; and if the volunteers assemble voluntarily one guinea is paid. This money must be accounted for by the Captain, after the exercise or service. No money, however, is paid for any person who does not deserve it. When any corps is assembled for any military duty, or to aid the civil power,‡ with the approbation of the Queen, the men are entitled to pay and billet, the same as other forces; and their families to the same relief as the families of militiamen.§ After the defeat of the enemy the corps are entitled to return to their homes; and a guinea is paid to each man willing to receive it, in order to aid him in his journey.

Half-pay and Pensions.

Commissioned officers disabled in service are entitled to half-pay, and other members of the corps to the benefit of Chelsea Hospital. Widows of officers killed in service are

* 44 Geo. III. c. 54, secs. 30, 33.

† 7 Geo. IV. c. 58, sec. 4.

‡ 57 Geo. III. c. 44, sec. 1.

§ The monies advanced to families in England are repaid to the Overseers by the County Receivers-General. No assessment can be made in Scotland for repayment of such money.

entitled to pensions. Half-pay may be received by officers who are also on full pay, as Captains, Lieutenants, Cornets, Adjutants, or Quartermasters, on taking the following oath:

"I, *A. B.*, do swear that I had not, between the and the any place or employment of profit, civil or military, under Her Majesty, besides my allowance of half-pay as a reduced in late regiment of save and except my pay as Adjutant *or* Quartermaster, *(as the case may be)* for serving in the corps of Yeomanry or Volunteers, *(as the case may be.)*"*

Arms. Places for keeping the arms, as well as persons to take care of them, may be appointed by Commanding Officers. The places, when inspected by two Deputy-Lientenants, or one and a justice, are paid for, in England, by the Receiver-General of the county. In Scotland, the Barons of the Exchequer grant a warrant for payment; the same must not exceed that which is authorized in a royal order issued for that purpose.

The money paid by the Receiver-General is replaced out of the first aid and supplies thereafter granted to the Crown.

Clerks to general and subdivision meetings in England are rewarded for their trouble, as under the Militia laws: in Scotland such rewards being certified to the Barons of Exchequer.

The arms provided at public expense are marked, and penalties imposed for selling† or buying‡ them.

* 44 Geo. III. c. 54; and 57 Geo. III. c. 44, sec. 2.

† Ten shillings, or one week's imprisonment with hard labour, or until the penalty is paid.

‡ Ten pounds or three months, or until the penalty is paid.

There is also a penalty of £10 or two months imprisonment, on persons refusing to return, when ordered, the arms provided at the public expense.

When any majority of the members of a corps of cavalry not assembled for military duty, are desirous of assembling under the command of their own officers for exercise, for not more than fourteen days in the twelve months, the County-Lieutenant, with the approbation of the Crown, may make an order for that purpose; and may also order any justice of the county to issue the proper precepts for billets, and these cavalry are to be legally billetted. They are not, when so out, under the Mutiny Act. The Lieutenant or his representative then signifies to the Secretary-at-War the days fixed, and the number of men; and the Secretary-at-War then causes to be paid to the Officer in Command two shillings and sixpence *per* man for each day, and one shilling and sixpence *per day* per horse.*

The fines or subscriptions paid for the use of any corps, and the arms and other material of any corps, are vested in law in the Commanding Officer. Any subscriptions or fines required by the rules of any corps, if not paid, may be directed by a justice to be doubled, and to be levied by

* The officer in command makes the following return :—

County of	*Dr.* £	s.	d.	*per Contra.*	£	s.	d.	*Cr.*
Cash received for days' pay of men. . .				Paid Yeomanry men for their attendance at the place of exercise on days appointed, being days' pay. . .				
To ditto for days' allowance for horses .				Paid allowance for horses used in exercise for days .				

But no officer is deemed a public accountant by reason of his having thus to disburse public money. 44 Geo. III. c. 94.

distress: such double fines are applicable to the stock of the regiment; the justice may however mitigate the penalty.

Regulations. It seems that most of the ancient corps, being voluntary associations, had their own rules and regulations; but now no *future* regulations for any corps are valid, unless submitted to the principal Secretary of State, and allowed by the Crown. The Queen may also annul any former rules and regulations.

The acceptance of a commission in a Yeomanry or Volunteer corps does not vacate a seat in Parliament.

DIGEST OF THE MILITIA ACTS.

The three *principal* Statutes of the Militia in the United Kingdom are the 42 Geo. III. c. 90 (England), the 42 Geo. III. c. 91 (Scotland), and the 49 Geo. III. c. 120 (Ireland). These three Acts are severally consolidations of all ancient Acts of the three countries respectively. Of these three, the English Act forms the model; and is the plan of the following Digest: the parts repealed, as well as the parts varied for Ireland and Scotland, are duly noted. If the reader wishes to find if any abstracted Section belongs to any one of the three countries, by referring to the foot notes he will find whether the Act or Acts of the Militia of the country he is referring to apply to that section. There are also many other Acts varying or adding to the Consolidation Acts, which also form an element of this Digest.

The only Act not fully embodied in this Digest is the Annual Militia Pay Act. The sections and tables of that Act, relating to pay and allowances, are too minute for abridgment; the Act itself ought, in all cases, to be referred to. The sections not relating to pay, &c., will be found in their proper places.

Section 2. The substance of this section, as well as the substance of similar sections in the Scotch and Irish Acts, will be found in pp. 229, 230; it is therefore unnecessary to repeat them here.*

The Queen appoints Lieutenants of counties, &c.

* 42 Geo. III. c. 90, sec. 2; Idem, c. 91, sec. 1; 49 Geo. III. c. 120, secs. 65, 66, 67.

Three deputies may be authorized to act in the absence, &c., of the Lieutenant.

Section 3. *Vide* pp. 230 to 233, where the substance of this section is given.

Commissions not vacated by removal, &c., of the Lieutenants.

No commission of any deputy, nor any commission of any officer in the militia is vacated by reason of the revocation, expiration, or discontinuance of the commission by which the lieutenant, or the three deputy lieutenants, were appointed.*

County lieutenants have the chief command of the Militia. Number of Deputy-Lieutenants.

The lieutenant of every county has the chief command of the militia of his county. Twenty (at the least) deputy-lieutenants are to be appointed, if so many can be found qualified. In *Ireland*, however, it is expressly enacted that the commanding officer of each regiment has the chief command of his regiment, and *not* the governors of the county.†

Qualifications of Deputies and Officers.

Sections 6, 7, 8, 9, 10, 11. These sections, which are in the Act very complicated, will be found tabulated and abstracted in the text in pages 233 and 234, and are therefore not here repeated.‡

No Deputy or Officer above Subaltern is to be appointed, until his qualification is delivered to the Clerk of the Peace.

No person can be appointed deputy of any county, or to a higher rank than that of lieutenant, until he has delivered to the clerk of the peace of his county (or in Scotland to the clerk of the commissioners), or, in the absence of the clerk of the peace or of supply, his deputy, a specific direction in writing, signed by himself, of his qualifications, stating the parish in which his estates are situate (and in Ireland with the denomination of the lands), and the clerk of the peace (or in Scotland, clerk of supplies), or his deputy, transmits to the lieutenant of the county (or in Ireland to the *Custos Rotulorum* or chief governor or chief magistrate) a copy of such description; and no commission is valid unless the qualification is delivered as above.§

The Clerk of the Peace enrols qualifica-

The clerk of the peace of every county enters the qualifications transmitted to him upon a roll, and causes to be inserted in the

* 42 Geo. III. c. 90, sec. 4; c. 91, sec. 4.

† 42 Geo. III. c. 90, sec. 5; 49 Geo. III. c. 120, secs. 12 and 65.

‡ The corresponding sections in 49 Geo. III. c. 120, are 65 to 70.

§ 42 Geo. III. c. 90, sec. 12; Idem, c. 91, sec. 8; 49 Geo. III. c. 12 sec. 17.

London Gazette the dates of the commissions, and names and ranks of the officers, together with the names of the officers in whose room they are appointed, as commissions in the Army are published from the War Office; and he may charge the expense of such insertion in the *Gazette* on the treasurer of the county in England, who is to pay the same; and the clerk or his deputy, in January every year, transmits to one of the Secretaries of State a complete account of the qualifications so left with him, in order that copies may be laid before both Houses of Parliament; and every deputy and commissioned officer (who has not already done so) at some general quarter sessions of the peace, within six months (or in Ireland three) of accepting his commission, takes such oaths and signs such declarations as are required to be taken and signed by officers of the Queen's other forces. In *Scotland* the above duties are performed by the clerk of supply, and the expenses of advertising the commission are paid by the collector of the land tax. In *Ireland* the publication is in the *Dublin Gazette*, and the expenses are paid by the collector of the Queen's revenue for each county.*

tions, and inserts in the *London Gazette* dates of commissions, &c., and annually transmits to the Secretary of State Account of Qualifications, to be laid before Parliament.

Persons acting as deputy-lieutenants, colonels, lieutenant-colonels, and majors, not being duly qualified, and not having delivered specific descriptions of qualification, as aforesaid, forfeit £200; and for similar offences in the office of captain, £100; one-half to go to any suing for the same; and in every action, &c., for the penalty, the *onus* of proving qualification lies on the person against whom the same is brought; provided always, that any peer or heir apparent of any peer may be deputy-lieutenant or officer in any militia in any county where he has a place of residence, although he has not the qualification required; and he is not obliged to leave a description of his qualification with the clerk of the peace.†

Penalty for acting without qualification.

Sections 15 and 16 are expired.

* 42 Geo. III, c. 90, sec. 13; Idem, c. 91, sec. 9; 49 Geo. III. c. 120, sec. 18.

† 42 Geo. III. c. 90, sec. 14; Idem, c. 91, sec. 10; 49 Geo. III. c. 120, secs. 19, 20, and 73.

Displacing Deputies and Officers.

The Queen (and in Ireland the Lord-Lieutenant also) may from time to time, by her pleasure signified to the lieutenant of the county, or in Ireland to the commanding officer, displace any deputies or officers of the militia, and thereupon the lieutenants shall proceed to appoint others in their stead.*

Clerks of Meetings.

The Lieutenant (or in *Ireland* the governor or a majority of the governors) of every county from time to time appoints a clerk of general meetings, and may displace him, as he thinks fit, and appoint another; and a majority of the deputies, at a subdivision meeting, appoint a clerk for their subdivisions, and displace him and appoint other, as they think fit.†

Sections 19 and 20, relating to the quotas of each county, are now virtually repealed.

General Meetings.

General meetings of the Lieutenancy (when not suspended), are held in some principal town of the county, and consist of the Lord-Lieutenant, with two deputies; or in case of death or absence of the lieutenant, of three deputies; and one such general meeting is held annually on the last Tuesday before the tenth of October in *England*, the twenty-fourth of October in *Ireland*, and the first of August in *Scotland*, or earlier if occasion requires in England; and when and as often as they find it necessary for carrying the purposes of the militia acts into execution, they may summon or cause to be summoned other general meetings, on any days fixed by the summons, of which days and the places of meeting notice is to be sent by post by the clerk of general meetings to the several deputy-lieutenants of the county, &c., seven days at least before the days appointed, &c.‡ in England; and in Ireland and Scotland published in the local papers fourteen days previously.§ A quorum of the lieutenancy are authorized to charge

* 42 Geo. III. c. 90, sec. 17; Idem, c. 91, sec. 12; 49 Geo. III. c. 120, sec. 67, sec 13.

† 42 Geo. III. c. 90, sec. 18; Idem, c. 91, sec. 13; 49 Geo. III. c. 120, sec. 74.

‡ 16 & 17 Vic. cap. 133, sec. 4.

§ 42 Geo. III. c. 91, sec. 16; 49 Geo. III. c. 120, sec. 79.

the expense of all such and all other notices to the treasurer of the county, &c.* who is to pay the same; and in case any annual or other general meeting is not attended by a quorum, the lieutenant or any one deputy-lieutenant, who shall attend such meeting, shall and may adjourn to any time and place within the county, &c., and in case no deputy-lieutenant attends at the time and place appointed for the next meeting, then the clerk of the general meetings, or his deputy, shall adjourn such meeting to any other time, to be holden at the same place.†

Subdivision Meetings. Quorum.

Meetings of the deputies,‡ within the subdivisions of the counties, &c., are held as hereinafter directed, which subdivision meetings consist of two deputies—or in Ireland two members—at the least: provided that at any subdivision meeting, where two deputies do not attend, any one deputy, together with any one justice of the peace of the county, may do all acts, matters, and things directed to be done by deputy-lieutenants at their respective subdivision meetings; and all such acts, matters, and things so done, shall be good, valid, and effectual, in England and Scotland.§ In Ireland the quorum is two deputies.‖

Subdivision of Counties, &c.

The subdivisions of the county are the hundreds, rapes, lathes, wapentakes, and other ancient divisions; but now, for the purpose of more conveniently apportioning the quotas of men, to be furnished under the new militia, Her Majesty may by order in council make subdivisions, conterminous with the superin-

* In Scotland, to the "collector of the land-tax." There is no provision made for this charge in Ireland. Scotch Act, sec. 16.

† 42 Geo. III. c. 90, sec. 21; Idem, c. 91, sec. 16. In Ireland, if the clerk adjourns, it must be for less than seven days, and for the same place; 49 Geo. III. c. 120, sec. 82. In sec. 84 of the same Act, the clerks of general meetings in Ireland will find regulations for summoning general meetings, and for obtaining lists for ballots.

‡ In Ireland, the subdivisional meetings consists both of governors and deputy-governors. 49 Geo. III. c. 120, sec. 81.

§ 42 Geo. III. c. 90, sec. 22; Idem, c. 91, sec. 17.

‖ In Ireland the justices of the peace form no part of a subdivisional meeting, but any deputy of a county may attend all the subdivision meetings of his county though not resident in that subdivision. 49 Geo. III. c. 120, sec. 81.

tendant registrar's districts, under the 6 & 7 Will. 4, c. 86, "for registering births, deaths, and marriages, in England." She may add two such districts together, and if one is not wholly in one county, may, for the purposes of the militia, order it to be considered as in one county only.*

This does not apply to *Ireland* or *Scotland*. In *Ireland*, the counties are divided, by a competent number of governors and deputies, appointed at a general meeting; provided that the subdivisions prior to 49 Geo. III. c. 120, are retained, and that the number of subdivisions shall not exceed by four the number of baronies in each county.†

Clerk to give notice of Subdivision Meeting, and an account of the days for receiving lists, balloting, and enrolling, &c.

The clerk of a subdivision meeting, as soon as convenient, after any subdivision meeting has been appointed, gives notice in writing of the time and place of meeting, to deputies resident in the subdivision, and also to the commanding officer of the regiment, if on actual service, or (if not on actual service) commandant, by notice addressed to the adjutant, (or in Ireland to the members only;)‡ and an account of the several days fixed for receiving lists, balloting and enrolling the men; and as soon as the men are enrolled transmit to the commandant, in manner aforesaid, a list of the names, trades, and usual abode, of all men enrolled; and where there are substitutes, the names, trades, and abode, of the persons in room of such substitutes to be enrolled.§

Before proceeding further it will be convenient to draw attention to the fact that the whole of the machinery for balloting militiamen remains inoperative.

When a quorum does not attend, another

If there do not appear at any subdivision meeting a quorum, the clerk shall, by notice in writing to all the deputies in the subdivision, or left at their respective abodes, appoint another

* 15 & 16 Vic. c. 50, sec. 10.

‡ 49 Geo. III. c. 120, sec. 80.

† 49 Geo. III. c. 120, sec. 85. That which follows, applies only to England and Scotland.

§ 42 Geo. III. c. 90, sec. 23; Idem, c. 91, sec. 18.

meeting to be held within fourteen days, at the same place, such notice being given five days at the least previous to such meeting. In Ireland the clerk has power to adjourn such ineffectual meetings, whether general or subdivisional, to some subsequent time, not exceeding the distance of seven days, at the same place, with the usual notices.*

meeting to be appointed by notice from the Clerk.

In *England* and *Scotland* general meetings appoint the first subdivision meetings, &c., which first meetings are to be held as early after the tenth of October, in every year as conveniently may be, or at such other time as may be most expedient; if judged needful, the general meeting appoints the time and place for a second general meeting, and issues orders to the chief constables, (or in Scotland to the schoolmaster of each parish, or to the chief constable, and where there is no chief constable to some other officer, &c.,) requiring every chief constable or other officer, to issue an order under his hand to all constables. Every parish, within their respective divisions, to return to the deputy-lieutenants within their respective subdivisons, at the places and on the days appointed at the first general meeting, in every year, lists of the names of all the men usually and at that time dwelling within their respective parishes, between the ages of eighteen and thirty-five years.†

General meeting to appoint subdivision meetings, and to require chief constables, &c. to order a return to be made of men between eighteen and thirty-five.

Where there is no chief constable of the subdivision, his place is taken by some other high officer of the hundred, rape, lathe, or wapentake. Parishes also include tythings and other

Chief Constables, &c., explained.

* 42 Geo. III. c. 90, sec. 24; Idem, c. 91, sec. 19; 49 Geo. III. c. 120, sec. 82. The 16 & 17 Vic. c. 133, sec. 4, does not apply to adjournments of subdivision meetings, but only to those appointed by general meetings, and to notices sent by clerks of general meetings.

† 42 Geo. III. c. 90, sec. 25; Idem, c. 91.

By stat. 46 Geo. III. c. 91, sec. 1, the Crown is empowered, if necessary, to direct the lieutenants, or in their absence the vice-lieutenants, or any three deputy-lieutenants authorized to act for him by precept under his or their hand and seal, to require the high constable to direct by warrant or order the constables or other officers to give notice within seven days after the receipt of any such order to or with all occupiers of houses and apartments to make returns according to the provisions of the 42 Geo. III. c. 90; the constables within ten days after the delivery of such notices, to make out lists and give notice of them, and the days, times, and places for hearing appeals, according to the provisions of the said act.

places in the subdivision, and constables also mean the tything-men, headboroughs, and other officers of parishes, tythings, and places, who in law and by custom act in lieu of constables. In *Ireland*, if there is no constable for any place, or if he refuses to act, the chief constable, &c. appoints a special constable, &c., to make out the lists.* No quakers can, however, be appointed; and on producing a certificate signed by two persons who have been quakers, within three months, he is exempt.

Constables, &c, to give notice in the form in Schedule (A).

The constables, &c., (or in Scotland the schoolmasters, constables, and other officers,) are required to return lists of persons fit and liable to serve in the militia, within fourteen days after any such returns are required; to give or leave notice in writing, in the form in the schedule marked (A) to or for every occupier, within the limits of the places for which they act, at his or her dwelling-house, (or where the dwelling-house is divided into different stories or apartments, and occupied distinctly by several persons, then to or for the occupier of each distinct story or apartment) to prepare or produce, within fourteen days after notice, a list in writing, to the best of belief, of the christian and surname of every man resident in such dwelling-house, or story or apartment, between the ages of eighteen and thirty-five, distinguishing every person of such age as aforesaid, claiming to be exempt from serving, together with the ground of exemption; and every such notice shall mention the day, time, and place appointed for hearing appeals within such subdivision; and every occupier after notice, must make out such list, and sign and deliver, or cause the same to be delivered, to the constable, &c., and if any occupier neglects or refuses to make out, sign, and deliver such list, within the time limited, or omits any person who ought to have been included therein, or knowingly makes any false return, every such occupier for every offence forfeits a sum not exceeding five pounds.†

Penalty of 5*l.* for not duly delivering lists, or making false returns.

* 49 Geo. III. c. 120, sec. 86; Idem, sec. 87.

† 42 Geo. III. c. 90, sec. 26; Idem, c. 91, sec. 21. In *Ireland* the penalty on constables for not returning lists is £10, or six months imprisonment, or until such sum is paid; 49 Geo. III. c. 120, sec. 88. They have, however, an allowance for attendance; high constables 11s. 4½d. per day, petty ditto 5s. 5d. per day; so that the first have not more than £20 per annum, nor the latter £12. Idem, sec. 89.

In addition every return to such notice is to specify the ages and other particulars relating to the persons returned therein, according to the form in the schedule; and if not made, such ages and other particulars are to be specified by the constables, in their returns, according to best of belief; the persons so returned are classed by the clerks of subdivision meetings according to their ages, and other circumstances in the form and in the classes according to schedule (B.), and classed according to the form (C.), in the return made by the clerks of the general meeting to the Privy Council. But power is given to the Crown, by an order of a Secretary of State, to direct that the persons returned shall be arranged in any other classes, and to require the returns to be made according to such classes.*

Returns to specify certain particulars in addition.

Also the respective ministers, churchwardens, and overseers, and other parochial officers in every parish or place are required to aid and assist the constables and other officers in making out the lists so to be returned.

Parish officers to assist in making out lists.

Where any notice shall be served upon any occupier being a Quaker, such occupier, within seven days after the service of notice, must produce to the constable a certificate under the hands of two or more reputable housekeepers, Quakers, acknowledging him one of their persuasion; and the constables are to make returns of the persons liable to serve, certified to be Quakers, in the same manner, &c.†

Quakers to produce certificates, acknowledging them to be of that persuasion, and in such cases the constable, &c., shall make returns of persons liable to serve in such houses as where returns are not made to notices.

The constables, &c. (or in Scotland schoolmasters and constables &c.) within one month after having delivered such notices make out in every year a list, according to the form in the schedule (B.), of the names of all the men usually and at that time dwelling within their respective parishes, &c. between the ages of eighteen and thirty-five, as well of those who have not been returned in pursuance of notice, distinguishing their respective ranks and occupations; those who have made returns, from those who have neglected to make returns; and where the true names cannot be

Constables, &c., to make out yearly lists according to schedule (B), and to affix a

* 46 Geo. III. c. 91, secs. 2, 3, and 4. The schedules A. B. and C. of this act are given in the Appendix.

† 42 Geo. III. c. 90, sec. 27; Idem, c. 91, sec. 22.

copy on the church door, with notice of the meeting for hearing appeals.

procured, the common appellation, and which of the persons infirm,* and which claim to be exempt, and on what account; and affix a true copy of every list on the door of the church or chapel belonging to such parish, or (if any place shall have no church or chapel), on the door of the church or chapel of some parish adjoining,† from one Sunday morning before they shall make the return which Sunday shall be three days at least before the meeting of deputies at which such return is to be made, and also notice at the bottom of the copy, of the day and hour and place for hearing appeals; and that all persons aggrieved may then appeal, and that no appeal will be afterwards received; and shall afterwards make a return of such list, or a copy to the Deputy-Lieutenants of the subdivision.

Copies of lists to be returned to the Deputy-Lieutenants.

* The nature of the infirmity need not be stated; 15 & 16 Vic. c. 50, sec. 23.

Publication of lists and notices of meetings for hearing appeals.

† A like copy and notice is to be affixed on the door or outer wall near the door of every church and public chapel in such parish, &c., *including places of public worship which do not belong to the established church*, (but no list or notice shall be invalidated by reason of the same not having been affixed in *every* place herein required for the publication thereof); and the Sunday on which every such copy and notice shall be affixed shall be fourteen days at the least before the day appointed for the meeting for hearing appeals; and the time for holding such meeting may be appointed accordingly, nothwithstanding such time may exceed one month after the issuing of any order or precept for the return. 15 & 16 Vic. c. 50, sec. 22.

Meetings for hearing appeals

By sec. 5 of the 46 Geo. III. c. 91, if any such lists shall be required under this act, the lieutenants, vice or deputy lieutenants, shall order and direct subdivision meetings to be held at such times and places as they shall direct, not exceeding one month after the precepts to the high constables have been issued for hearing appeals and correcting the lists; and the subdivision clerks, within seven days after such meeting, must make out and transmit correct abstracts of the lists to the clerk of the general meeting, who is required, upon the receipt of such abstracts, within seven days, to make out and return abstracts thereof to the Privy Council.

Penalty on neglecting to appeal.

By the 43 Geo. III. c. 50, sec. 13, every person who shall wilfully neglect to appeal at the time appointed, shall forfeit for every offence a sum not exceeding 40s. nor less than 5s., at the discretion of any two or more deputy lieutenants or justices or magistrates, and on non-payment be imprisoned for any time not exceeding one week.

‡ 42 Geo. III. c. 90, sec. 28; Idem, c. 91, sec. 23.

Persons aggrieved may appeal to the subdivision meetings.

If any person inserted in any list is thereby aggrieved, or by the omission of any other name, or claims to be exempted, such person may appeal to the subdivison meeting for hearing appeals; and any two or more of the deputies are to hear and determine all such appeals, and if they cannot be heard on the day first appointed, to adjourn to any other days; the determination of two deputies if only two are assembled, or of the major part of them if more than two, is final.*

Constables, &c., to attend and to verify lists on oath, and the Deputy-Lieutenants to amend lists and appoint second meetings, &c.

On the days and places appointed for the return of the lists, the constables, &c., (or in Scotland schoolmasters, constables, &c.,) must attend and verify the returns upon oath; and the subdivision meetings, after appeals or claims of exemption, direct such lists to be amended, and also the names of all persons exempted to be struck out, and those of persons omitted to be inserted; and after amending the lists appoint their second meetings within their subdivisions, and return to the clerk of the general meetings, certificates, under their hands, in the form in the schedule to this act annexed, marked (C.), of the number of men in each parish, tything, or place, between the ages of eighteen and forty-five years, distinguishing the number of men liable to serve, and also the number of men exempt from serving, in each parish, tything, or place within the subdivision; the same to be filed by the clerk for the use of the general meetings.†

Penalty for endeavouring to prevail on Constables, &c., to make false returns, and for refusing to tell their names, &c.

Any person who by any bribe, &c., endeavours to prevail on any officer to make a false return of any list, or to erase or leave out the name of any person who ought to be returned to serve, for every offence forfeits fifty pounds; and any person refusing to tell his christian and surname, or falsely telling a christian or surname, (pretending it his true name) or refusing to tell the christian or surname of any man lodging or residing within his or her house, or knowingly telling any false name, (pretending, &c.,) to any officer authorized to demand it, forfeits ten pounds.‡

* 42 Geo. III. c. 90, sec. 29; Idem, c. 91, sec. 24; 49 Geo. III. c. 120, sec. 97.

† 42 Geo. III. c. 90, sec. 30; Idem, c. 91, sec. 25.

‡ 42 Geo. III. c. 90, sec. 31; Idem, c. 91, sec. 26; 49 Geo. III. c 120, sec. 91.

Deputies may issue orders for the attendance of Constables, &c.

The deputies (or members in Ireland) within any subdivision, or any two or more of them, may from time to time issue their order or warrant under their hands and seals, requiring the attendance of the constable, &c.; and if any constable, &c. refuses or neglects to appear according to such order or warrant, or if any chief constable or other officer refuses or neglects to return any list as before directed, or to comply with the orders and directions of the said deputies or members, or in making such return is guilty of any fraud or wilful partiality, or gross neglect in his duty, the said deputies or members are to commit the offender to the common gaol for one month, or to fine him any sum between twenty pounds (in Ireland five pounds) and forty shillings.*

Two Justices may appoint deputies to Quakers.

If any chief or other constable be a Quaker, (certified by two Quakers), and neglects or refuses to perform the duties required; any two justices of his division, in all cases where it is expedient and necessary for the due execution of the Militia Acts, by their order, under their hands and seals, (or in Scotland under their hands only), may appoint a fit and proper person to be deputy to such Quaker; and every such deputy shall have the like powers, and incur like penalties as such officer; and where any deputy shall be so made, the principal chief constable (being a Quaker) is discharged from the performance of any duty.†

Two or more places and lists for them may be added together, and the Constables, &c., shall act together as if they were the officers of the same parish.

The subdivision meetings may add together, whenever they think necessary, any two or more parishes, &c.; (or in *England* places extra parochial also), and also may add together the lists of such parishes (in Ireland, also parts of parishes), so as to make the choice of men by ballot as equal and impartial as possible;‡ and where any parishes added together lie in different districts or divisions, within the same county, &c., direct in what division the same be considered; and the deputies then proceed upon the lists so added together; and the constables, &c., (in *Scotland* the schoolmasters, constables, &c.,) act together as if they were officers of one parish, &c. All constables, or schoolmasters, &c., acting to-

* 42 Geo. III. c. 90. sec. 32; Idem, c. 91, sec. 27; 49 Geo. III. c. 120, sec. 90.

† 42 Geo. III. c. 90. sec. 33; Idem, c. 91, sec. 28.

‡ 49 Geo. III. c. 120. sec. 93.

gether, hold their meetings in the parish, &c., named first in order. If any difference or disagreement arises between the officers, touching the execution of the Militia Act, the deputies acting in and for the subdivision where the difference or disagreement happens, hear and determine it, and make such order therein as to them seems meet; such orders being final and conclusive.*

Act to extend to extra parochial places added to parishes, and where no Constables or Overseers in such places are appointed the officers of the parish may act.

The several clauses and provisions in the General Militia Acts of England, are construed to extend to every extra-parochial place, so added to any parish, &c.; and where there is any extra-parochial or other place, wherein no constables are appointed, the respective constables of the parishes, &c., respectively, to which such extra-parochial or other place shall have been added, act as constables, &c., for such extra-parochial or other place, in the execution of the Militia Acts, and do all acts, matters, and things, &c., in that behalf; provided that if any rate is made for any parishes, &c., jointly, such rate is distinctly made for the purpose of the Militia Acts, and for no other purpose whatever: provided that every such separate rate shall and may be made, raised, and levied, as well in such extra-parochial or other place, as in any parish, in like manner as any rate for the relief of the poor.†

Rates made jointly to be distinctlymade for the purpose of Militia Act and levied as poor rates.

Clerks of subdivision meetings in certain cases to forfeit 20*l.*

The clerks of all subdivision meetings are, within fourteen days after every subdivision meeting, to transmit to the clerk of the general meeting, copies of rolls, signed at subdivision meetings; and omitting or neglecting to make such return, or knowingly or wilfully making any false return, forfeit for every offence twenty pounds.‡

Clerks to general meetings failing to transmit to the Privy Council annual returns or making

The clerks to the general meetings transmit to the Privy Council annually, as soon as the same can be done, accurate returns in the form in schedule D.; and omitting or neglecting to make such return within one month after the general meeting, at which the returns of men shall have been laid before such

* 42 Geo. III. c. 90, sec. 34; Idem, c. 91, sec. 29.

† 42 Geo. III. c. 90, sec. 35.

‡ 42 Geo. III. c. 90, sec. 36; Idem, c. 91, sec. 30. In Ireland, also, these clerks enter the proceedings in a book; entering, at the same time, the names of the members present, and signing his own at the foot; 49 Geo. III. c. 120, sec. 75.

false returns to forfeit 100*l.*

meeting, or shall knowingly or wilfully make any false return, forfeit for every offence one hundred pounds.*

Quotas.

Formerly the Privy Council, on or before the twenty-fifth of June, one thousand eight hundred and five, and afterwards at the expiration of every succeeding ten years, took into consideration the number of men fit and liable to serve in each county; and forthwith ascertained, settled, and fixed the number of men for the next succeeding ten years to serve for each county, by the proportion that the number of men bear to the whole number of militia-men by this act directed to be raised, and shall thereupon transmit the numbers so fixed and settled to the respective lieutenants of the counties, and cause notice to be thrice printed in the *Gazette*.† But this is now altered, see *ante*. p. 246.

Where the number fixed shall be greater than the former quota, the general meeting shall appoint what number shall be chosen for each division:

Where the number of militia-men, fixed and settled for any county, is greater than the former quota, then a general meeting, to be holden for that purpose, appoints what number of men shall serve for each respective division within such county; and the additional number of men to make up the whole number so fixed and settled shall be provided or chosen in the same manner as other militia-men; and all the additional men so provided or chosen as aforesaid, or their substitutes, and also all volunteers, shall take the oath by this act required to be taken, and shall be enrolled, or sign their consent to serve, directed by this act, and in case of refusal are subject to the penalties;

and where the number shall be less, shall dismiss the excess by ballot proportionally out of each division.

provided always, that where the number of militia-men so fixed and settled for any county is less than the former quota of such county, then the said lieutenants, together with any two or more deputy-lieutenants, or (on death, removal, or in absence of the said lieutenant) any three or more deputy-lieutenants may, at a general meeting held for that purpose, dismiss to their own homes by ballot, proportionally out of each respective division, so many men as exceed the number fixed and settled,

* 42 Geo. III. c. 90, sec. 37; Idem, c. 91, sec. 31. The returns referred to in this section are by the 46 Geo. III. c. 91, to be in the form hereto annexed.

† 42 Geo. III. c. 90, sec. 37; Idem, c. 91, sec. 32.

and the persons dismissed remain liable to serve in, and are required to join any corps serving for the county, from the militia of which they have been dismissed, whenever called upon for the supplying of vacancies; and the names of all persons dismissed are entered in a list; and the deputies must cause the men necessary for supplying vacancies in the militia of such county, to be ballotted for out of the persons in such list, while fit persons can be found to supply such vacancies, and so from time to time, so long as any persons in such list can be found fit; and every person so ballotted, not unfit by sickness or bodily inability, must serve in the militia of the county, upon the conditions, and for the remainder of the time for which he was engaged to serve before dismissal; and whenever all persons returned in such list, fit to supply vacancies by ballot, have supplied such vacancies, then the men necessary for supplying future vacancies, shall be ballotted for in manner directed by this act.*

Men dismissed liable to serve, their names entered in a list, out of which vacancies filled up by ballot.

The lieutenants of any county, with any three or more deputy-lieutenants, or (on death, or removal, or absence of any lieutenant) any five or more deputy-lieutenants may, at any general meeting held, alter the appointed subdivisions within such county, if they shall see occasion;† and also may alter the established allotment of the number of men in each respective division, to serve towards raising the number of men directed to be raised for such county, (according to the numbers contained in the respective certificates received from the several subdivision meetings; or in Ireland when the established allotment is injurious to any division).‡

General meetings may alter subdivisions, and the allotment of men in each division.

The deputies, at their said second meeting within any subdivision, appoint the number of men to serve for each parish,

At the second subdivision meeting the

* 42 Geo. III. c. 90, sec. 39; Idem, c. 91, sec. 33.

† This is, of course, subject to the Queen's power of appointing the subdivisions to be co-extensive with the register-general's districts. This part of this clause does not apply to Ireland, though the remainder does.

‡ 42 Geo. III. c. 90, sec. 40; Idem, c. 91, sec. 34; 49 Geo. III. c. 120, sec. 100. In Ireland the general meeting apportions in the first instance, being summoned immediately on the receipt of the certificates, within seven days, and not sooner than four; 49 Geo. III. c. 120, sec. 99.

Deputy Lieutenants appoint number of men for each parish, &c., and order for notice to be given, &c.

within the subdivision, in proportion to the number last appointed, in the manner hereinbefore directed, at a general meeting, to serve for each division; and appoint another meeting to be held within three weeks from the day on which such meeting was held in the same subdivision, and issue an order to the officers of the respective divisions, requiring them to give notice to the officer of every parish, (in *Scotland* including the schoolmaster) within their respective hundreds, divisions, of the number of men appointed to serve for such parish, and of the time and place of the next subdivision meeting;* and the said deputies, or any two or more of them, assembled in pursuance of such appointments, cause the number of men to serve to be chosen by ballot, out of the list returned for every parish, and appoint another meeting to be held within three weeks in the same sub-division, and issue an order to the officers of the respective divisions, to direct the officer of every parish to give notice to every man chosen to serve, to appear at such meeting, which notice is given or left at his abode, seven days before such meeting; and such officer to attend such meeting, and make such return upon oath of the days when such notice was served; and every person chosen, upon such notice, must appear at such meeting, and if found able and fit for service, and approved of, then and there take the following oath; (that is to say),

Persons chosen by ballot to take the following oath:

"I *A. B.* do sincerely promise and swear, that I will be faithful, and bear true allegiance to Her Majesty Queen Victoria, and that I will faithfully serve in the militia 'in any part of the United Kingdom of Great Britain and Ireland,' for the defence of the

Mode of making apportionments where there are yeomanry or volunteers.

* By the 44 Geo. III. c. 54, sec. 16, the lieutenants and deputy lieutenants of every county when they fix at any general meeting the proportions of men to serve in the militia for the several hundreds or other divisions, shall deduct the number of yeomanry and volunteers, exempted from the persons liable to the ballot, and apportion the quotas accordingly; and the deputy lieutenants at their respective subdivision meetings, shall in like manner apportion the quotas for the several parishes and places: provided that when a greater number of men are actually serving for any division, parish, or place, than would be due from it according to the last made apportionment, the surplus shall not be discharged, but the vacancies as they occur shall be supplied from such divisions, parishes, or places, as by the last made apportionment are most deficient.

same during the time of five years, for which I am enrolled, unless I shall be sooner discharged." *

and shall be enrolled to serve for five years, but may produce substitutes, who, if approved, shall be enrolled and take the following oath:

And every such person is then and there enrolled (in a roll then and there prepared for that purpose), to serve such county, as a private militia-man, for five years; provided always, that if any person chosen produce a man for his substitute, and, in Great Britain, of the same county, or of some adjoining parish whether in the same county or not, who has not more than one child born in wedlock, able and fit for service, and examined and approved, such substitute shall be enrolled to serve as a private for five years; and also for such further time as the militia shall remain embodied, if within five years Her Majesty order and direct the militia for which such man is enrolled to be embodied, and such substitute take the following oath:—

"I *A. B.* do sincerely promise and swear that I will be faithful, and bear true allegiance to Her Majesty Queen Victoria, and that I will faithfully serve in the militia in any part of the United Kingdom of Great Britain and Ireland, for the defence of the same, during the time of five years, and for such further time as the militia shall remain embodied, if, within the space of five years Her Majesty shall order and direct the militia to be drawn out and embodied, unless I shall sooner be discharged."

Any person chosen, for whom such substitute has been so produced, approved, enrolled, and sworn as aforesaid, exempt from service as if he himself had served.†

Oath of non-commissioned officers and drummers.

* These oaths are prescribed by the 51 Geo. III. c. 118, instead of those provided by 42 Geo. III. c. 90, sec. 41, and other Militia Acts, and include in their terms *Ireland* as well as Great Britain.

Also by the 51 Geo. III. c. 118, it is enacted, that the following oath shall be taken on their appointment by non-commissioned officers and drummers, namely: "I *A. B.* do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, and that I will faithfully serve in the militia in any part of the United Kingdom for the defence of the same, until I shall be legally discharged."

In Ireland the lists are settled also at the sub-division meetings, on a plan not very different from the above; *sed vide* 49 Geo. III. c. 120, sec. 95.

† 42 Geo. III. c. 90, sec. 41; Idem, c. 91, secs. 35 and 36; 49 Geo. III. c. 120, sec. 104.

Volunteers may be received with the consent of the inhabitants of any place, and a rate established for paying them bounties not exceeding 6*l.* each.

If the churchwardens or overseers of any parish, with the consent of the inhabitants at a vestry or other meeting for that purpose, for the calling of which vestry or meeting three days' public notice is given, specifying the cause of such, (in the Scotch act there is no provision for a public meeting, it simply says, "if the inhabitants of any place shall provide and produce") to the said deputies, or any two or more of them, at any subdivision meeting for choosing by ballot, any volunteer or volunteers, examined and approved, such volunteer or volunteers then and there sworn in and enrolled to serve for such term, and on the conditions as in case of substitutes; and the said deputies must cause only such number of persons to be chosen out of the list for such parish, as then wanted to make up the whole number for such parish; * and if any such churchwardens or overseers give to such volunteer, any sum not exceeding six pounds, to serve for such parish, such churchwardens or overseers may make a rate upon such parish, according to the rate then made for the relief of the poor, which rate, (approved by any justice), churchwardens or overseers may collect, and reimburse themselves such sums paid to such volunteer or volunteers, and the overplus (if any) applied as part of the poors' rate; if any person refuse to pay such rate, any justice may, upon complaint made by such churchwarden or overseers, by warrant under his hand and seal, levy the same by distress, returning the overplus (if any) after the said rate and the charges of such distress and sale shall be paid; no person chosen, who has served in the militia, either by himself or by substitute, or then serving himself or by substitute, is liable to pay any such rate; provided always, that if any person think himself aggrieved by any such rate, he may appeal to the next general or quarter sessions.†

Persons who have served themselves or by substitute not liable to the rates.

Certain persons exempt from service.

No peers, commissioned officers, officers on the half-pay of the navy, army, or marines, non-commissioned officers and privates serving in the standing army, commissioned officers serving or who have served four years in the militia, resident members of the Universities of Oxford, Cambridge, and Durham; members of the

* The rest of this section applies to England only, and not to Scotland.

† 42 Geo. III. c. 90, sec. 42; Idem, c. 91, sec. 37.

senate, examiners, professors, tutors, and lecturers of the Universities of London, or any college, school, or institution connected therewith, under the provisions of the charter, any student thereof duly matriculated and actually receiving education, any actual student in the college of St. David, Lampeter, any clergyman, teachers,* licensed within the county, riding, or place, to teach in some separate congregation, whose place of meeting shall have been duly registered within twelve months previous to the general meeting appointed to meet in October; dissenting ministers, being a preacher or teacher of any congregation of dissenting protestants who shall have taken the oath of allegiance, supremacy, and adjuration, (19 Geo. III. c. 44), constables or other peace officers,† attorneys, articled clerks, apprentices, seamen or seafaring men,‡ persons mustered, trained, or doing duty, or employed in any of His Majesty's docks or dockyards for the service thereof, or employed and mustered in His Majesty's service, in the Tower of London, Woolwich Warren, the several gun wharfs of Portsmouth, or at the several powder mills, powder magazines, or other storehouses belonging to His Majesty, under the direction of the Board of Ordnance, nor any person being free of the Company of Watermen of the River Thames, nor any poor man who has more than one child born in wedlock, shall be liable to serve personally, or provide a substitute to serve in the militia; and no person having served personally or by substitute, according to the directions of any former act or acts relating to the militia, or under this act, is obliged to serve again, until by rotation it shall come to his turn; but no person who has served only as a substitute or volunteer in the militia, shall by such service be exempted from serving again, if he shall be chosen by ballot.§

Persons who have served not liable to serve again till their turns come, but substitutes or volunteers, if chosen by ballot, shall serve.

* 43 Geo. III. c. 10.

† No seafaring man can, either as substitute or volunteer, be enrolled in the militia; 43 Geo. III. c. 50, sec. 7.

‡ Also the county and district constables appointed under 2 & 3 Vic. c. 93.

§ 42 Geo. III. c. 90, sec. 43; Idem, c. 91, sec. 38; 49 Geo. III. c. 120, sec. 96.

There are other classes of persons besides those enumerated in the above section who are exempt from serving in the militia, namely: Persons enrolled and serving as an effective member of any corps of yeomanry or volunteers, duly returned and certified as such; 44 Geo. III. c. 54, secs. 7 and 8. Nor are such volunteers liable even if discontinued, if they have

Deputy Lieutenants may cause lists to be amended and proceed to a fresh ballot, and may administer oaths, &c.

If through the neglect or mistake of any officer, or other cause, the full number for any subdivision should not be duly enrolled at the meeting appointed for that purpose, then the deputies at their said meeting are immediately to cause the lists to be amended, proceed to a fresh ballot, to adjourn their meeting or appoint other meetings, and repeat the amending of the lists as may be necessary and expedient; any one deputy may administer the oath taken by persons to serve in the militia, to any ballotted person, volunteer, or any substitute, after due examination and approval; and such deputy must direct and require the clerk of the subdivision to enrol every such person duly examined and approved, together with the date of the oath, in the roll of the sub-division.*

Persons chosen, except Quakers, and not appearing, &c., to forfeit 10*l.*

If penalty be not paid, the person shall be compelled to serve.

If any person chosen by ballot, (not being a Quaker,) refuses or neglects to appear and take the oath, and serve in the militia, or to provide a substitute who shall take the oath, and sign his consent to serve as a substitute, every such person forfeits ten pounds, and at the expiration of five years is again liable to serve or provide a substitute; in default of payment of penalty, or for want of sufficient effects whereon to levy the same, the name of such person is entered on the roll, and the person delivered over to some proper officer of the regiment, battalion, or corps, for which he was ballotted, and compelled to serve for a term, computed from the time of his being apprehended, and subject to punishment for afterwards absconding or deserting.†

New lists shall be made out if any are lost.

If the list of any parish is lost or destroyed, the deputies may cause a new list to be made and returned to them at their next sub-division meeting, in the same manner as the list lost or destroyed.‡

been ballotted for when in service; 53 Geo. III. c. 81, sec. 4. Persons who have served personally or by substitute in the militia, until by rotation it shall come to their turn; 44 Geo. III. c. 54, secs. 7 and 8. Officers in the post-office also are exempt; 7 Will. IV. and 1 Vic. c. 33, sec. 12.

* 42 Geo. III. c. 90, sec. 44; Idem, Geo. III. c. 91, sec. 39.

† 42 Geo. III. c. 90, sec. 45; Idem, c. 91, sec. 40.

‡ 42 Geo. III. c. 90, sec. 46; Idem, c. 91, sec. 41; 49 Geo. III. c. 120, sec. 94.

Every person chosen by ballot is liable to serve, although he may have removed from the place where his name was inserted in the list, provided he was residing there at the time when the list was prepared; every person liable, having more than one place of residence, serves where his name was first inserted in the list; and the clerk to the subdivision meeting, (if required it), grants a certificate *gratis*, that such person's name was inserted in such list, specifying the time when such list was made and returned.*

Persons chosen shall serve though they remove; and those having more than one residence shall serve where their names were first inserted in the list.

Where any parish lies in two or more counties, &c., the inhabitants of such parish shall serve in the county wherein the church of the parish is situated. But in Ireland, where parishes are in two or more counties, the parts are considered as separate parishes in the respective counties.†

Persons to serve in the Militia of the county in which parish church is situate.

If the subdivision meetings receive information, or suspect that any person whose name is inserted in any list, and described as an apprentice, has been fraudulently bound apprentice to avoid serving, they may make inquiry thereof, and summon such persons as they shall think necessary to appear before them, at such time and place as they appoint, and examine such persons upon oath; and in case it appears that such binding was so fraudulent, such deputies may appoint such person so fraudulently bound apprentice, to serve for the parish for which such list was returned, if there is a vacancy, and if no vacancy at that time, then upon the first vacancy that happens; and the person to whom such apprentice shall have been so bound, for such offence forfeits ten pounds.‡

Persons fraudulently bound apprentice liable to serve, and the master shall forfeit 10*l.*

* 42 Geo. III. c. 90, sec. 47; Idem, c. 91, sec. 42; 49 Geo. III. c. 120, sec. 12. There is no provision in Ireland requiring the clerk to give a certificate.

† 42 Geo. III. c. 91, sec. 48; Idem, c. 91, sec. 43; and 49 Geo. III. c. 120, sec. 92.

‡ 42 Geo. III. c. 90, sec. 49; Idem, c. 91, sec. 44; 49 Geo. III. c. 120, sec. 121. In Ireland such person is immediately enrolled, and bound, himself in £20, and with a surety in £10, to join when required, his period of service commencing when he joins. Failing a surety, he can be committed until he joins.

Two Deputy Lieutenants may provide substitutes for Quakers, and may levy the expenses by distress, &c.

If any Quaker, chosen by ballot to serve, refuses to serve, or to provide a substitute, two or more deputies may upon reasonable terms, provide and hire a fit person of the said county, or of some adjoining place, to serve as a substitute for the Quaker; and any two or more deputies (or, in Ireland, three governors or deputies) may by warrant under hand and seal, levy by distress upon such Quaker, money necessary to defray the expense of the substitute, rendering to such Quaker the overplus, after deducting the charges of the distress, &c.; and in case any measures be used towards any such Quaker thought oppressive, he may complain to the deputy-lieutenants at their next meeting, to hear and finally determine the same.*

Quakers may complain to the Deputy Lieutenants.

Justices may order payment of costs for levying by distress, where Quakers refuse to pay the rates for providing volunteers.

Where any rate is made for the providing of volunteers, and the churchwardens and overseers make complaint to a justice of the peace, that any Quakers refuse to pay the money they are rated at, such justice shall order such costs and charges to be paid for levying such distress as he shall think reasonable, not exceeding ten shillings on each of the said Quakers, where there are no more than two, and where more than two, not exceeding five shillings on each;† provided that no man shall be deemed a Quaker, unless he produces before some subdivision meeting, a certificate of two or more reputable housekeeper Quakers, resident within the county, &c., and dated within the three months immediately preceding the day on which it is produced, acknowledging him to be of their persuasion.‡

Who deemed a Quaker.

Bounty money to Quakers' substitutes, how to be paid.

By the 43 Geo. III, c. 50, s. 12, where any deputy provides a substitute for a Quaker, the money agreed to be paid to such substitute is paid to him upon the certificate of such deputy, by the overseers of the parish or place for which he shall be provided, out of the poor rates, and such sum of money shall be levied in the manner before directed, and repaid to such overseers as have advanced the same.

* 42 Geo. III. c. 90, sec. 50; 15 and 16 Vic. c. 33, sec. 33; 42 Geo. III. c. 91, sec. 45; 49 Geo. III. c. 120, sec. 119. In Ireland the demand under the Militia Acts on any Quaker, must be made separately from other demands, as must all the levies; 49 Geo. III. c. 120.

† This portion of this section appears only in the English Act.

‡ 42 Geo. III. c. 90, sec. 51; Idem, c. 91, sec. 46.

Examination of ballotted men.

No man can be approved or enrolled as a ballotted man, substitute, or volunteer, until he has been carefully examined by some surgeon of competent skill, and declared and reported to be neither ruptured, lame, maimed, nor afflicted with any disorder rendering him unfit to serve; and the subdivision meeting, or any two deputy-lieutenants, must, before they enrol any man, cause examination to be carefully made; and the said deputy-lieutenants may require the attendance of any surgeon of any regiment, battalion, or corps of the militia of the county, &c, for which any man is to be enrolled, if any such surgeon can conveniently be had, or otherwise the attendance of any other competent surgeon.*

Attendance and allowance of Surgeons.

By the 55 Geo. III. c. 65, s. 8, every surgeon of militia who attends such an examination, at a place not more than ten miles from the head quarters of the regiment where he is bound to reside, is to attend without any fee or reward, except an allowance of one shilling a mile going and returning. If no surgeon of the militia reside within such distance of the place of enrolment, then any two deputy-lieutenants may summon any other competent surgeon to attend, and who is to be entitled to a sum not less than half-a-guinea, nor exceeding two guineas, as the deputy-lieutenants shall direct, for each day's attendance; and every surgeon of militia or other surgeon is, previously to such examination, to take the following oath before some deputy-lieutenant:

Oath.

"I, A. B. do swear that I will to the best of my ability faithfully and truly report as to the fitness for service of the man or men about to be submitted to my examination, and that I will not receive from any of them any fee or reward whatever for any such examination."

If any person refuse to be examined, he may be imprisoned.

By the 43 Geo. III. c. 50, s. 14, if any person whose name shall be inserted in any list made and amended, and whose name shall be drawn upon the ballot, shall refuse when required by any two or more deputy-Lieutenants, justices, or magistrates,

* 42 Geo. III. c. 90, sec. 52; Idem, c. 91, sec. 47.

to be examined as to his fitness to serve, he may, at their discretion, be imprisoned for any time not exceeding one week.

Persons so imprisoned are still liable to serve.

And by the 43 Geo. III. c. 100, s. 1, every ballotted man, imprisoned for refusing to be examined, is notwithstanding liable to serve, if he shall appear to the deputy-lieutenants a proper person to be enrolled.

Men before enrolment to be examined on oath as to residence, &c.

By the 43 Geo. III. c. 50, s. 9, every ballotted man, substitute, and volunteer, is previous to enrolment, examined upon oath before the deputies, as to his residence, age, and family, as follows:—

"I do make oath that I am by trade a , and I have been usually resident in the parish of in the county of ; that I am unmarried, (or have a wife living as the case may be), and that I have no children, (or only one child born in wedlock), and that I have no rupture, nor ever was troubled with fits, and am no ways disabled by lameness or otherwise, but have the perfect use of my limbs; and that I am not a seaman or seafaring man, nor an apprentice; and that I do not belong to His Majesties navy, army, or marines, nor to any other corps of militia. As witness my hand at the day of 185 . Sworn before me at this day of 185 .

Witness present,

Two Deputies may discharge persons chosen by ballot, unfit for service, and cause others to be chosen.

Whenever it appear to any subdivision meeting, that any person chosen to serve is not of the regulation height, or not approved upon examination, and (if in *England*) is not possessed of an estate in land, goods, or money, of the clear value of one hundred pounds, and who shall make oath that he is not possessed of such estate, such deputy-lieutenants are to discharge such person, and immediately to amend the list for that place, and to cause another person to be chosen in his stead.*

* 42 Geo. III. c. 90, sec. 53; Idem, c. 91, sec. 48; 49 Geo. III. c. 120, sec. 105.

The deputy-lieutenants, as soon as they have enrolled the number required in their subdivision, are to divide the men enrolled into as many classes of the description hereinafter mentioned, as shall be found among such men; in the first class, all the men under thirty years of age, having no children; in the second class, the men above thirty years of age, having no children; in the third class, the men not having any children under the age of fourteen; in the fourth class, the men having any children, one of whom only shall be under fourteen years; and in the last class, the men not included in any of the former descriptions; and shall forthwith make out a list of such classes, according to the form in schedule (E.), and within three days the clerk of the subdivision meeting transmits to the clerk to the general meetings a copy of such list, to be entered in a book kept for that purpose.*

Deputies to class the men enrolled, and make out a list in the form in schedule (E.), a copy to be transmitted to the clerk to the general meetings, to be entered in a book.

Whenever any militia-man, (sworn and enrolled) becomes unfit for service, the commander of the corps to which he belongs, together with any two or more deputies of the county to which the corps belongs, if the corp then is within the said county, or for the commandant only if the corps be absent therefrom, to discharge such man from his regiment, &c.; but another man shall not be ballotted for in the room of the man so discharged, until confirmation of two or more deputies of the county, &c., assembled at a meeting in the subdivision, for which such man was enrolled; or, in *England* and *Scotland*, at any general meeting for the county also.†

Men becoming unfit to serve may be discharged.

Whenever any private, before the expiration of his term, dies, or is appointed serjeant, corporal, or drummer, in the militia, or is discharged unfit for service, in pursuance of the sentence of a court-martial, the commanding officer of the regiment, &c. to which such private belongs, must certify the vacancy to the clerk to the general meetings, who forthwith transmits the certificate to the deputy-lieutenants of the subdivision for which the

Vacancies occasioned by death, &c., to be filled up by a fresh ballot.

* 42 Geo. III. c. 90, sec. 54; Idem, c. 91, sec. 49.

† 42 Geo. III. c. 90, sec. 55; Idem, c. 91, sec. 50; 49 Geo. III. c. 120, sec. 123.

man was enrolled, and the vacancy must be filled up by a fresh ballot.*

No ballot for a private appointed non-commissioned officer or drummer in the room of one reduced.

Whenever any private is appointed a non-commissioned officer, or drummer, in any regiment, &c., in room of any non-commissioned officer or drummer reduced to the ranks, no ballot shall take place in consequence of any vacancy occasioned by such appointment, until the reduced man is discharged.†

Where a man is provided in the room of one appointed, &c., quarter sessions may order a sum to be paid out of the county rates, in aid of the poor rates.

Where in any regiment, &c., in which any private is appointed a sergeant, corporal, or drummer, in consequence of any death or discharge of any non-commissioned officer or drummer, the parish for which such private was then serving must provide another man in his stead;‡ any two deputy-lieutenants for the subdivision may certify the same to the justices at the next general or quarter sessions of the same county, &c.; and the justices shall at such sessions order a sum of money, not exceeding the average price paid for a substitute or volunteer, to be paid out of the county rates to the churchwardens and overseers of the poor of the parish, to be applied in aid of the poor rates in such parish or place.§

Deputies, on death, promotion, &c., to cause vacancies to be filled up by ballot.

Whenever any certificate, signed by the commandant of any regiment, is transmitted to the deputies of the subdivision, of any private having died, being appointed a serjeant, corporal, or drummer, or been discharged as unfit for service, or by the sentence of a court-martial, deputies must cause vacancy to be filled up by ballot immediately. ‖

Men ballotted for in room of those whose terms expire before November 20, next

Any subdivision meeting must ballot for men, in room of all men actually serving, whose terms of service expire before the twentieth of November then next following such meeting; and at a following meeting, as soon as may be, enrol the men or their

* 42 Geo. III. c. 90, sec. 56; Idem, c. 91, sec. 51.

† 42 Geo. III. c. 90, sec. 57; Idem, c. 91, sec. 52.

‡ In Scotland, such man is to ballotted for, unless a volunteer is found by the parish. The remainder of this clause does not apply to Scotland; 42 Geo. III. c. 91, sec. 53.

§ 42 Geo. III. c. 90, sec. 58.

‖ 42 Geo. III. c. 90, sec. 59; Idem, c. 91, sec. 55.

substitutes; the commanding officer of any body is empowered to discharge any man of his regiment whose service will expire before the twentieth of November, and to receive any other man in his room, who has taken the oath and been enrolled; every man so discharged, if serving for himself, is entitled to the same immunity as if he had served his full term; and if, as a substitute, then the person for whom he served.* ensuing, the latter to be discharged.

If any servant is enrolled as a militia-man, such enrolment shall not vacate or rescind the contract or alter the engagement between such servant and his employer, unless the militia of the county be embodied or ordered so to be, or unless such person shall leave service for the purpose of being trained and exercised, and not return again to the same service at the end of the training, or as soon after as may be, allowing to his employer an abatement from his wages in proportion to his absence, to be settled by a justice. The enrolment of servants shall not vacate their contracts, unless militia is embodied.

Where any dispute shall arise between such servant and his master, touching any money due to such servant for service performed before his departure from service, on complaint to any justice for the county, or place where such employer inhabits, such justice may determine every such complaint, and examine on oath every such servant, or any witness, and make order for the payment of so much wages, in proportion to the service performed, or such abatement in proportion to his absence from service, provided the sum do not exceed twenty pounds; and in case of non-payment for twenty-one days next after such determination, such justice may issue his warrant to levy distress, the employer rendering the overplus to him.† Any dispute touching wages under £20, a Justice may settle.

Every person who receives money to serve as a substitute or volunteer, and neglects to appear at the usual meeting appointed for swearing in the militia-men, or before some one deputy-lieutenant, in order to be sworn, being convicted thereof before any deputy or justices of the peace, must return the money to the Substitutes or volunteers who do not appear to be sworn, to return the bounty.

* 42 Geo. III. c. 90, sec. 60; Idem, c. 91, sec. 60.

† 42 Geo. III. c. 90, sec. 61; Idem, c. 91, sec. 56. The latter part only of this section applies to Ireland, and in the Irish Act there is no proviso to serve the contract. This section does not apply to volunteers; 49 Geo. III. c. 120, sec. 122.

person or persons from whom he received it, and forfeit to them any sum not exceeding forty shillings nor less than twenty shillings; and if he does not immediately return the money, and pay the penalty, he shall be committed for fourteen days, or until the sum be returned.*

How two deputies or a justice may order money agreed to be given to a substitute or volunteer, to be paid to him.

Two deputy-lieutenants or a justice may order the money agreed to be given to a substitute or volunteer to be paid him on enrolment where the militia is not embodied, and where it is, one half, and the other to the clerk of the subdivision, to be remitted to the paymaster and paid to the man on joining and being approved; and if he shall not join or be approved of, the money shall be paid to the person provided in lieu of him; and where the militia is embodied at the time of enrolment, it shall be lawful to direct one half part of the money engaged to be given, to be paid to him forthwith, or to be advanced to such person or to such of his family, and in such proportions, as he shall request at the time of such his enrolment, and the remaining part to be paid to the clerk of the subdivision meeting, who shall thereupon forthwith remit the same to the paymaster or battalion clerk of his regiment, &c., to be retained until the substitute or volunteer has joined and been approved at head quarters; or if he does not join, to be applied to the payment of some other substitute or volunteer in lieu, (the payment of such money may be enforced according to 20 Geo. II, c. 19.); and if any subdivision clerk omit or neglect to remit such money within one week after it is paid to him, forfeit for every offence twenty pounds.†

Enlisting into Regular Forces.

In the old Militia Acts of George III. provision was made against militia enlisting to the regular army, but this is now regulated by the 53 Geo. III. c. 81, secs. 8 and 9; whereby the proportion of men allowed to enlist into the regular forces from the militia of any county having more than one regiment, is one-seventh of the actual establishment of each regiment *annually* (51 Geo. III. c. 20, sec. 1). If the number of men actually serving in any regiment, on the 24th January in each year, after deducting the annual quota allowed to enlist, exceeds the legal establishment, the number in excess may volunteer or enlist. The 50 Geo. III.

* 42 Geo. III. c. 90, sec. 62; Idem, c. 91, sec. 57.
† 42 Geo. III. c. 90, sec. 63; Idem, c. 91, sec. 58.

c. 20, is repealed, but is necessary to explain this act.* Any volunteer, under the new militia system, who enlists, and at the time of enlisting or attestation denies that he is a militia-man, on proper proof before a justice or regimental court of enquiry, forfeits all militia bounty, and one penny a day stoppage from his pay for eighteen calendar months. If a ballotted man or a substitute, his punishment is imprisonment, not exceeding six months over and above any other penalty he may be liable to; and *every* militia-man, from the day when his service in the militia ends, but not sooner, belongs to the corps of the army, or East India Company's army, that he may have enlisted into, and not sooner; he is however liable to serve in the United Kingdom, in the regiment he has joined, as long as the militia remains disembodied, and while it is not called out for training or exercise.† See also *post* p. 353.

Soldiers offering to serve as substitutes in the militia, forfeit ten pounds to the informer, or are imprisoned not exceeding three months.‡ Soldiers Volunteering.

Formerly any person giving orders to any serjeant, drummer, or other person serving in the militia, to beat up for volunteers to serve in the militia, was, upon proof thereof and of such beating up, before any justice, liable to forfeit twenty pounds, one moiety to the use of the informer; and such serjeants, &c., refusing to declare who gave the orders, to be imprisoned not exceeding three months. There was also a penalty on municipal officers, adjutants, quarter-masters, and serjeants in the militia, taking money as insurance for providing substitutes, of fifty pounds. § But now, by several statutes, beating for militia volunteers is lawful. Beating for Recruits.

In all cases where any matter or thing is directed to be enquired of, or examined into upon oath before any lieutenant or deputy, or justice, any such persons are authorized to ad- Oaths.

* 42 Geo. III. c. 90, sec. 63; Idem, c. 91, sec. 59; Mutiny Act, sec. 45, 1854; 51 Geo. III. c. 20; 53 Geo. III. c. 81, and 56 Geo. III. c. 64.

† 42 Geo. III. c. 90, sec. 64; Idem, c. 91, sec. 59.

‡ 43 Geo. III. c. 50, sec. 15; 42 Geo. III. c. 91, sec. 65.

minister the oaths required by the act.* Secs. 68, 70, and 71 of the General Act, are now superseded by other provisions. For sec. 69, relating to officers of the artillery, see *post* at the end of the Dijest.

Lord-Lieutenant may be Commandant.

The lieutenant of any county may act as commandant of any corps of militia for his county during the time there is not any other commandant appointed; but no lieutenant can at any one time act as commandant of more than one body of militia; and where the lieutenant of any county takes the command of any militia, not sufficient to form a regiment or battalion to be commanded by a colonel, lieutenant shall, notwithstanding, be entitled to the rank of colonel, unless such militia shall be united with the militia of any other county: such lieutenant cannot, however, receive any greater pay than the proper commandant would be entitled to.†

Lieutenant-Colonel may have commission of Colonel.

When a battalion is commanded by a lieutenant-colonel, who shall have been commandant of the same for *five years or longer*, while embodied, the lieutenant of the county may, with the approbation of the crown, give to such lieutenant-colonel commandant a commission of colonel.‡

Accepting other Commissions.

Every officer of militia, duly qualified, who accepts a commission or appointment of the same rank in any other militia corps thereby vacates his former commission, and continues to rank in the general service according to the date of his commission or appointment of the same rank in the militia so vacated.§

Provision for the absence of the Commanding Officer.

When any commandant of any corps is absent from Great Britain, and until he shall return and have notified his arrival to the clerk of the peace of the county to which such corps belongs, and to the commanding officer and adjutant thereof, His Majesty

* 42 Geo. III. c. 90, sec. 67. The same thing, though not expressly enacted, is included in many clauses of the Irish Act.

† 42 Geo. III. c. 90, sec. 72.

‡ 42 Geo. III. c. 90, sec. 73.

§ Idem, sec. 75. Also in *Ireland* any militia officer accepting a commission in the regulars vacates his militia commission; 49 Geo. III. c. 120, sec. 33. On principle he would do the same thing in England and Scotland, without any statuteable regulation.

may, by warrant under sign manual, direct and order the officer next in command, residing in Great Britain, to act as commandant; and all powers and authorities then are vested in and exercised by that officer, and from and after the warrant all matters are transacted by him; and all money directed to be issued or paid to or to the order of such commandant, for the use of the corps, is issued and paid to or to the order of such officer next in command; and all acts, matters, and things done by and with such officer so next in command, which are required to be done by or with such commandant when in Great Britain are good and valid; and during the absence from Great Britain of the commandant, and until he return and notify his arrival, the officer next in command, residing in Great Britain, appoints the regimental or battalion clerk and agent, and takes security from such agent, and is liable to make good *all* deficiencies on account of the pay, clothing, or public stock of the corps, provided that the officer next in command who assumes the powers of his absent commandant, must, within seven days after he assumes any such powers, notify the absence from Great Britain of such commandant to the lieutenant of the county; and also, when in actual service, to the secretary at war. If any such commandant has given any orders for clothing, necessaries, or accoutrements, which ought to be provided in due course or in pursuance of any order by proper authority, if before such orders are completed, or after completed and before the money be issued for the same, he leaves Great Britain, the orders shall nevertheless be completed, and the money issued in respect thereof be paid to the order of such commandant; in like manner, if any officer next in command, in consequence of the absence from Great Britain of his commandant, give any such orders for clothing, and before such orders be completed, or after completed and before the money be issued, the commandant return to Great Britain, and notify his arrival, the orders so given by officer so next in command shall be completed, and the money issued in respect thereof be paid to the order of such officer.* In Ireland all the colonel's

* 42 Geo. III. c. 42, sec. 76; 15 and 16 Vic. c. 50, sec. 6. Or, in Ireland, lord-lieutenant appoints such persons as he thinks proper, who have served three years in the regular forces or the East India Company's service, or five years in the embodied militia, or such service in it and the regular forces as shall make up five years; 49 Geo. III. c. 120, sec. 21; 17 and 18 Vic. c. 107, sec. 8.

power devolves on the next in command, *in toto*, until notification of his return.*

Adjutants. Her Majesty may appoint any one person whom she thinks proper to be an adjutant to each regiment;† and such adjutant, if appointed out of the army, whilst in the militia preserves his army rank. The lieutenant of any county, on the recommendation of commandant of any regiment, may appoint the adjutant of such regiment to serve with the rank of captain, provided such adjutant shall have served five years, although he may not have qualification: no such appointment, however, is valid, unless in the instrument granting the same is specified in what regiment such adjutant hath served, and what was the date of his commission. No adjutant with the rank of captain is entitled to rank above or to command any captain of a company in the militia; no such adjutant is entitled to receive any other pay than that of adjutant. Each adjutant of infantry receives 8s., and of artillery 9s., per day. There are several provisions for adjutants in the Militia Pay Act, to which, for want of space, we must refer them. (*Vide* 16 and 17 Vic. c. 116, secs. 23 to 29, and sec. 36.) Every adjutant and other officer of the permanent staff is bound to reside where the Secretary of War appoints, on pain of forfeiture of pay, except when on furlough.‡

Surgeons. In every case where the number of privates is sufficient to form a regiment, battalion, or corps of not less than two companies of sixty each, the lieutenant, (in *Scotland* only when empowered to name the lieutenant-colonel), with the approbation of Her Majesty, appoints a fit and proper person, who has passed Surgeon's Hall, and received his certificate, to be surgeon of such regiment; every such appointment recites the certificate, and an attested copy thereof shall be transmitted to and filed with the clerk of the general meetings. Every surgeon, while the militia is disembodied, receives ten shillings per day for every day of his attend-

* 49 Geo. III. c. 120, sec. 14.

† In *Scotland* any person who has served five years in the Queen's forces or the embodied militia; 17 and 18 Vic. c. 106, sec. 21.

‡ 16 and 17 Vic. c. 116, sec. 2; 42 Geo. III. c. 90, sec. 77; Idem, c. 91, sec. 71.

ance during any exercise of such militia, and the same for every day he attends the enrolments—the last-mentioned attendances being certified by any deputy of subdivision meeting to the receiver-general of the county: in addition, every surgeon also receives his actual and reasonable expense for medicines and necessaries for the sick during the time of exercise, and for his attendance, medicines, and necessaries for the sick serjeants, corporals, and drummers, when actually resident at the head quarters of the regiment, which shall be repaid him by the receiver-general on an account stated by such surgeon, and certified by the commanding officer and adjutant of the regiment—if no adjutant, then by the commanding officer of each company; and every surgeon so appointed, during the time of the militia being embodied, receives the pay and allowance of a surgeon of infantry, and is subject to the like rules, restrictions, and directions in every respect, as far as the same may be applicable. No surgeon is capable of holding or of receiving any pay in respect of any other commission in such militia.* The pay of a surgeon's mate or assistant-surgeon is two shillings and six-pence *per diem*. (16 and 17 Vic. c. 116, sec. 8.)

Surgeons, when the militia is embodied, to receive the pay and allowance of surgeons of infantry.

In every case where the number of privates is sufficient to form a regiment or battalion of 360 privates, Her Majesty may from to time appoint such as to her seems proper to be quartermasters; and the lord-lieutenant may, on the recommendation of the colonel, appoint such quartermaster to serve with the rank of lieutenant or ensign, without qualification; such quartermaster not to be capable of holding any commission or receiving any pay in respect of any commission in any company in the militia, whilst quartermaster.†

In corps consisting of not less than 360 privates, a quartermaster may be appointed with the rank of a subaltern, though not qualified, but shall not hold any other commission.

In a similar manner the Queen appoints proper persons to be paymasters, and it would seem also, in certain cases, battalion clerks, to act as paymasters, serjeants-major, and serjeants of the militia; provided that, when embodied, the colonel of the corps

Paymasters, &c.

* 17 and 18 Vic. c. 106, sec. 20; 42 Geo. III. c. 90, sec. 78; Idem, c. 91, sec. 73. In *England*, also, all persons qualified to act as army-surgeons, &c. are qualified for the militia; 17 and 18 Vic. c. 105, sec. 55. Similarly in *Ireland;* 17 and 18 Vic. c. 107, sec. 9.

† 42 Geo. III. c. 90, sec. 79.

may from time to time appoint the serjeant-major and serjeants of his corps, as occasion may require, to supply vacancies or complete the full number of serjeants.*

To corps consisting of not less than three companies, a paymaster may be appointed, but the money for a less number to be paid to the commanding officer.

To a corps consisting of not less than three companies, when not in actual service, a regimental or battalion clerk to execute the office of paymaster may be appointed; but where the number is not sufficient for three companies of sixty privates, no clerk is allowed; but all persons required to remit or pay any money to any regimental or battalion clerk, in respect of the militia, or on behalf of any men serving, shall remit and pay all monies to the commanding officer, who shall account for the same as a regimental or battalion clerk.†

No adjutant, &c., to be appointed captain of a company, nor any captain of a company to be appointed adjutant, &c.

No adjutant, surgeon, regimental or battalion clerk, paymaster, or quartermaster, in the militia, is capable of being appointed captain of a company; no captain is capable of being appointed adjutant, surgeon, regimental or battalion clerk, paymaster, or quartermaster.‡

Half-pay Officers serving as Subalterns.

No officer entitled to half-pay or army allowances, forfeits his half-pay during the time he serves as lieutenant, ensign, adjutant, regimental or battalion clerk, quartermaster, surgeon, surgeon's mate, or assistant-surgeon, in any militia.§

The proportions of Non-Commissioned

The staff of the disembodied militia of the United Kingdom, on permanent pay at head quarters, is in the following proportions

* 15 & 16 Vic. c. 50, sec. 6.

† 42 Geo. III. c. 90, sec. 80.

‡ 42 Geo. III. c. 90, sec. 81.

§ 42 Geo. III. c. 90, sec. 82; Idem, c. 91, sec. 76; and 49 Geo. III. c. 120, sec. 35; 16 and 17 Vic. c. 116, sec. 20. Instead of the oath usually required of half-pay officers, every such officer shall take the following oath:

"I *A. B.* do swear, that I had not, between the and the any place or employment of profit, civil or military, under His Majesty, besides my allowance of half-pay as a reduced in late regiment of save and except my pay as lieutenant [ensign, adjutant, regimental or battalion clerk, quartermaster, or surgeon, *as the case may be*], for serving in the militia." [Or in Ireland, "save and except my pay for serving in regiment of militia."]

And the said oath shall entitle such person to receive his half-pay.

(that is to say): one adjutant, one serjeant-major for each regiment, battalion or corps of militia, and one serjeant for every forty private men, and one drummer for every two companies, with an additional drummer for each flank company, and one drum-major for every regiment or battalion consisting of eight companies and upwards, and of no greater number.* When in actual service there is one serjeant and one corporal to every *twenty* privates; when not in actual service one drummer to every company, with one drummer for each flank company of regiments or battalions, consisting of five or more companies. In actual service there is an addition of one drummer to every company so drawn out. The daily pay when not in actual service, of every serjeant, is one shilling and sixpence; of every corporal, one shilling and two pence; and of every drummer, one shilling; and such serjeants, corporals, and drummers, are new clothed when not in actual service once in two years; and all serjeants, corporals, and drummers, take an oath.† Officers and Drummers, and their pay.

Formerly the commandant‡ of every regiment and battalion, and in England of every corps consisting of two or more companies, might appoint a serjeant major; but now, the Queen, (or in Ireland, the Lord-Lieutenant) appoints the serjeant-major and serjeants, unless the militia is embodied, and then the commanding officer appoints to vacancies to complete the full number;§ and the commandant of every regiment of three or more companies may appoint a drum major;‖ all serjeants, corporals, and drummers having received any pay as such are engaged and compellable to Serjeant-Majors and Drum-Majors.

* 10 Geo. IV. c. 10, sec. 3.

† "I *A. B.* do sincerely promise and swear, that I will be true and faithful and bear true allegiance to Her Majesty Queen Victoria, and that I will faithfully serve in the militia within the United Kingdom, for the defence of the same, until I shall be legally discharged." 42 Geo. III. c. 90, sec. 83; Idem, c. 91, sec. 77; 109 Geo. III. c. 120, sec. 25.

‡ The "commandant" in this Digest means the colonel, the colonel-commandant, the commandant, or other officer actually in command, with the commandant's powers.

§ 15 and 16 Vic. c. 50, sec. 6; Militia Act (Scotland), 1854, sec. 22; 49 Geo. III. c. 120, sec. 14.

‖ Each serjeant-major of infantry, where one is appointed, in corps consisting of two or more companies, receives 2s. 10d.; and officers of artillery, 3s. per day.

No Publican to serve as a Serjeant, &c.

serve until legally discharged; no person who keeps any house of public entertainment, or sells ale, wine, brandy, or other spirituous liquors by retail, capable of being appointed, can receive pay as serjeant, corporal, or drummer in the militia. If in any regiment there is a surplus of fifteen private men or upwards, after the appointment of one serjeant and one corporal to every thirty private men, such regiment has one additional corporal when not in actual service, for such surplus.*

Additional Corporals.

Commandants may discharge Serjeants, &c. and appoint others.

Subject to the above, any serjeant, corporal, or drummer, may be discharged by the commandant; and the commandant may appoint any proper person in the room of every serjeant, corporal, and drummer, who shall die, desert, or be discharged.†

Extra Drummers may be kept as Fifers or Musicians.

If in *Ireland*, the Lord-Lieutenant or the commandant of any regiment, desirous of keeping up a greater number of drummers than directed, as fifers or musicians, and willing to defray the expense, may retain any number of drummers employed as fifers or musicians, over the number established, or at any time engage any additional number of drummers, as fifers or musicians; and all drummers retained or engaged to serve as fifers or musicians, are deemed drummers of militia, and subject to the same orders, regulations, penalties, and punishments, as other drummers of militia; and shall serve as drummers so long as they shall receive the same or better pay and clothing as other drummers have, and no longer.‡

Serjeants of Chelsea Hospital, and out-pensioners, may receive their allowances therefrom, together with their pay in the militia.§

Officers, Serjeants, &c. having served

Any person having served as serjeant, corporal, or drummer, in the militia for twenty years, and discharged on account of age or

* 42 Geo. III. c. 90, sec. 83; Idem, c. 91, sec. 77; 49 Geo. III. c. 120, sec. 29.

† 42 Geo. III. c. 90, sec. 84; 42 Geo. III. c. 91, sec. 79; 49 Geo. III. c. 120, sec. 14.

‡ 42 Geo. III. c. 90, sec. 85; Militia Act (Scotland), 1854, sec. 24; 49 Geo. III. c. 120, sec. 7.

§ 42 Geo. III. c. 90, sec. 86; Idem. c. 91, sec. 81.

infirmity, on the recommendation of the commandant *and* the Lord-Lieutenant, or two or more deputy lieutenants, or (on the death or removal, or in the absence of the said lieutenant,) on the recommendation of the commandant, *and* three or more deputy lieutenants, is entitled to examination at the Chelsea Board, and is capable of being placed on the establishment of that hospital at the pension of five-pence per diem, if the board judge him deserving.* Generally no person entitled to these pensions or allowances forfeits them by serving in the militia.

In the Militia may receive the Chelsea or Kilmainham Pension.

Serjeants of militia also receive pensions under Royal Regulations, made in pursuance of the 54 Geo. III. c. 11.

The militia (unless the Queen otherwise directs), are called out once in every year, to be trained and exercised for the space of twenty-one days; and in every place in which it is appointed that the whole of the militia shall not be trained or exercised at the same time, then the respective parts thereof are trained and exercised successively, and the men are trained and exercised in such manner and in such proportion, at such time or times, and place or places, in such county or riding as appointed, (with the approbation of Her Majesty), by the general meeting; or in default of any meeting being held, then by the lieutenant or by three deputy lieutenants; but less than two companies of sixty privates cannot be ordered to be trained and exercised together, unless the militia do not amount to so many. The general meeting may alter the places appointed for assembling the men for exercise, and appoint other or additional places, giving notice thereof.†

Militia to be exercised twenty-one days annually

Her Majesty may, if she sees fit, direct all or any part of the militia of any county, riding, or place, to be called out for training and exercise more than once in every or any year, and at such times or time as Her Majesty may think fit, so as the whole

Militia may be called out for training more than once in a year.

* 42 Geo. III. c. 90, sec. 86; Idem. c. 91, sec. 81; 16 and 17 Vic. c. 116, sec. 21. There is a similar power in Ireland with respect to Kilmainham Hospital, the recommendation of the commanding officer being sufficient; 49 Geo. III. c. 120, sec. 36.

† 42 Geo. III. c. 90. sec. 87; Idem, c. 91, sec. 82; 15 & 16 Vic. c. 50, sec. 26.

period of training and exercise of any militia man do not exceed twenty-one days in any year, save as hereinafter provided.*

When any Regiment is disembodied, Her Majesty may order it not to be trained for twelve months.

Whensoever any regiment has been been disembodied, Her Majesty may order and direct that such regiment, battalion, or corps, shall not be trained or exercised for the space of twelve calendar months, calculated from the day on which it was disembodied, or for a number of months not exceeding twelve months.†

Order in Council may cause Militia to be exercised out of their own counties, or alter the period of exercise.

The Queen may, by order in council, or in Ireland, the Lord Lieutenant, may order all or any part of the militia to be marched out of their own counties, into any part of England or Wales, for the purpose of training and exercise; and in Scotland the Secretary of State may move any regiment not embodied to any part of the United Kingdom during training; and the Queen *in council* may extend or reduce the period of training and exercise of all or any part of the militia, so as the whole period of training and exercise in any year shall not exceed fifty-six days nor be less than three days.‡ The Queen has the further power, when any corps of militia is *actually assembled* for training, &c., or after the notices have been given, to extend the period of *that* training, in all, to a period less than fifty-six days, without fresh notices. The period of any previous drill at head quarters, or with any regular forces, not being reckoned in the fifty-six days.§

Places for exercise.

The lieutenants of the counties, with the approbation of one of the Secretaries of State, or in *Ireland* the Lord Lieutenant, may take on lease or hire, for or during such terms or periods as they may think necessary, pieces of ground convenient for the training and exercise of the militia of such counties.‖

In *Ireland* the times and places of training are appointed with

* 15 & 16 Vic. c. 50, sec. 26; Militia Act (Ireland), 1854, sec. 17; Idem (Scotland), 1854, sec. 45.

† 42 Geo. III. c. 90, sec. 88; Idem, c. 91, sec. 83.

‡ 15 & 16 Vic. c. 50. sec. 27; Militia Act (Ireland), 1854, sec. 18; Idem (Scotland), 1854, sec. 46.

§ 17 Vic. c. 13, secs. 2 and 3; Militia Act (Ireland), 1854, sec. 19.

‖ 15 & 16 Vic. c. 50, sec. 28; Militia Act (Ireland), 1854, sec. 20 Idem (Scotland), 1854, sec. 43.

the approbation of the Lord Lieutenant, by the lieutenants of the county.*

During the time any militia is assembled for being trained and exercised, or being embodied, and at all times when on permanent pay, the Mutiny Act and the Articles of War are in force with respect to such militia, and to all the officers, non-commissioned officers, drummers, and privates, in all cases whatsoever;† but so that no punishment extend to life or limb; and the officer commanding and present with any detachment or division of militia so called out, not under the rank of captain, may order a general or regimental court-martial, for the trial of any offence committed by any officer, non-commissioned officer, serjeant, corporal, drummer, or private, under and during his command; and if a sufficient number of officers are not present to constitute such court-martial, the commanding officer of the regiment to which the detachment belongs is required, upon application to him by the officer commanding such detachment, to order a sufficient number of officers of proper rank to attend at such court-martial, as members thereof; and the sentence of every such court-martial shall in every case be submitted to the commandant, or in his absence from the county to the senior field officer for his approval, who shall cause such sentence to be put in execution, mitigated, or remitted, as he shall think best for the service.‡

During the time of exercise, the Mutiny Act and Articles of War in force with respect to Militia.

Officer commanding any Militia out to exercise, not under rank of Captain, may order Courts-Martial, &c.

No offender is liable to be punished *after* the militia has been dismissed from training or been disembodied, except for desertion, unless that the charges are made out and delivered six months after training or being disembodied. Similarly, militia volunteers attached for instruction to the Queen's troops, or permanent staff of a militia regiment, is under the act and the command of the commander of those troops of that staff. General Courts Martial may be appointed, as if the militia were embodied; §

No punishment beyond six months after training, except for desertion.

* Militia Act (Ireland), 1854, sec. 17.

† 42 Geo. III. c. 90, sec. 89; Idem, c. 91, sec. 84; 49 Geo. III. c. 120, sec. 39. Militia Act (Scotland), 1854, sec. 52.

‡. 55 Geo. III. c. 168, sec. 1, 2, and 3; Militia Act (Scotland), 1854, secs. 53 and 54; 55 Geo. III. c. 168, secs. 1 and 2; Militia Act (Ireland), 1854, sec. 35; 17 and 18 Vic. c. 105, sec. 53.

§ Volunteers attached to the line for instruction, may be allowed pay, and are under the command of the officer commanding the regiment they are attached to; and are subject to the Mutiny Act.

and the officers attending are entitled to pay and two shillings mileage for the whole journey, for going to the court-martial at the commencement, and returning after conclusion of proceedings.*

Notices of time and places of exercise.

Under the old consolidation acts, the times and places of exercise were appointed by meetings of General Lieutenancy, but not now, unless by special order of one of the Secretaries of State; but the times and places of training and exercise are appointed (under the Queen's approbation, or in Ireland that of the Lord-Lieutenant,) by the Lord-Lieutenant of each county; and in England, in case of absence or illness, by the vice-lieutenant, or if there is no vice-lieutenant, then by three deputies authorized by the Queen.† The notices to the men, of training &c., are sent by the order of the commanding officer of each body of troops by post, to the residences of the several men as stated in their attestations or as subsequently notified by them, and notices are also placed on the church doors in a manner prescribed by the several late acts.‡

Clerks of subdivision meetings send lists of men, and time and place of exercise, to the Commanding Officers, &c.

The clerks of the subdivision meetings shall, within ten days after the receipt of such notices, cause a list, specifying the name and date of enrolment of all the persons enrolled within each subdivision respectively, and the time and place of exercise, to be transmitted to the commanding officer of the regiment, or to such person appointed by commanding officer to receive and cause a duplicate of list to be transmitted to the adjutant of the regiment; and where there is no adjutant, to the major or captain commandant. In Ireland this list must be sent at least ten days before the time appointed for the annual exercise.§

Pay to commence on joining; but

The pay of every person enrolled, when not embodied and in actual service, and called out for being trained and exercised

* 55 Geo. III. c. 168, sec. 2.

† Militia Act (No. 2), 1854, sec. 38; Idem (Scotland), 1854, sec. 44; Idem (Ireland), 1854, sec. 17.

‡ Militia Act (No. 2), 1854, sec. 11; Idem (Scotland), 1854, sec. 44; Idem (Ireland), 1854, sec. 21; 49 Geo. III. c. 120, sec. 40.

§ 42 Geo. III. c. 90, sec. 91; Idem, c. 91, sec. 86; 49 Geo. III. c. 120, sec 41.

shall commence upon the day he joins; provided always, that if such person shall have been prevented joining by sickness or other sufficient cause, and produce to the commanding officer a satisfactory certificate, the commanding officer is required to direct an allowance of pay to be made according to the time mentioned in certificate.* *Every* person in the militia, when called for exercise, is entitled to the same pay as when embodied, *i. e.* to the pay of the regular militia.

to those prevented joining, an allowance to be made, on a satisfactory certificate.

In case any militia man shall on his march to the place for the annual exercise, be disabled by sickness or otherwise, one justice or any mayor or chief magistrate of any city, town, or place where such man shall then be, by warrant under his hand (and in England and Ireland seal also,) may order him relief; and in England the same is given to the officers of the parish where such man may then be; and the officers giving relief, upon producing an account of the expenses to the treasurer of the county, for which such man serves, (the account being first allowed under the hand of a justice), is reimbursed such expenses by such treasurer.

Militia men falling sick on the march may be relieved by warrant of a Justice.

In Scotland, the warrant itself is produced to the inspector of the poor of the stewartry, county, &c., where the man is, and the secretary at war pays all such expenses upon production of the warrant, and an account certified by the justice. In Ireland the collector of excise performs this duty; the expenses being allowed him in his accounts, on the production of an account certified by two justices.†

All mayors, bailiffs, constables, tythingmen, head-boroughs, and other chief magistrates and officers of cities, towns, parishes, tythings, and places, and (in their default or absence) any one justice of the peace inhabiting within or near any city, town, parish, tything, or place (but for no others), are respectively required to quarter and billet the officers, non-commissioned officers, drummers, and private men serving in the militia, when called out to annual exercise, in inns, livery-stables, ale-houses,

Magistrates must billet th Militia when called out to annual exercise, &c.

* 42 Geo. III. c. 90, sec. 92; Idem, c. 91, sec. 87; 49 Geo. III. c. 120, sec. 54.

† 42 Geo. III. c. 90, sec. 93; Idem, c. 91, sec. 89; 49 Geo. III. c. 120, sec. 54; Militia Act (Scotland), 1854, sec. 51.

victualling-houses, and all houses of persons selling brandy, strong waters, cyder, wine, or metheglin, by retail, or in any beerhouses in which soldiers may be billetted, upon application made to them by the Lord-Lieutenant or by the commanding officer of the militia of the county, (or in Scotland any other commanding officer of any body, division, or detachment of militia, where they have been called out to exercise); and when not embodied or called out, all officers aforesaid, or in their default or absence, one justice of the peace, are respectively required to order and provide convenient lodging with fire and candle, in such houses, for the serjeants, corporals, and drummers of the permanent staff of the militia, and the owners must receive them under the same penalties as in the billet laws.

The sections in the Scotch and Irish Acts are substantially the same as this, enacting that the men are to be billetted as by law the Queen's forces are to be billetted.*

Permanent staff have also a right to be billetted.†

Justices to grant warrants for impressing carriages for the Militia on its march.

When the militia is called out to be trained and exercised, any justice of the peace thereunto required by an order from the lieutenant, or from any deputy-lieutenant, or the commanding officer of any body of militia, (or in Ireland any governor, deputy-governor, or the colonel or commanding officer of any body of militia) in such county, issues his warrant to the chief constable of divisions, or to the constables of the several parishes, from, through, near, or to which any such body is ordered to march, requiring them to provide sufficient carriages to convey the arms, clothes, accoutrements, ammunition, and other stores, with able men to drive; and in case such sufficient carriages and men cannot be provided within any such county, division, parish, or place, then any justice for any adjoining county, upon such order being shown to him, issues his warrant within such adjoining county, to make up such deficiency of carriages and men; and such lieutenant, deputy-lieutenant, or

* 42 Geo. III. c. 90, sec. 94; Idem, c. 91, sec. 90; 49 Geo. III. c. 120, sec. 48; Militia Act (Scotland), 1854, sec. 50; 15 and 16 Vic. c. 50, sec. 34; 11 Geo. IV. and 1 Wm. IV. c. 64; 17 and 18 Vic. c. 105, sec. 34; 16 and 17 Vic. c. 116, sec. 42; 49 Geo. III. c. 120, sec. 48.

† 16 and 17 Vic. c. 116, sec. 42.

commanding officer, (or in *Ireland*, governor, deputy-governor, colonel, or commanding officer,) requiring such carriages and men, must at the same time pay to every chief constable or other officer, for the use of the persons who provide such carriages and men, one shilling for every mile any waggon with five horses, and any wain with six oxen or with four oxen and two horses respectively travels; and the sum of ninepence for every mile any such cart with four horses travels; and so in proportion for any carriages drawn by any less number of horses or oxen, (or in *Ireland*, the rates payable in like cases under the Mutiny Act.) For which respective sums every chief constable or other officer receiving the same is to give a receipt to the person paying; and every such chief constable must order and appoint such persons, having carriages, within their respective divisions, parishes, (or in *Ireland*, baronies,) or places, as they think proper, to provide and furnish such carriages and men, according to the warrant; and every person so ordered is to provide and furnish the same for one day's journey, and no more;* and in case any such chief constable, constables, or other officers, shall be at any charges for carriages, over and above the money so received by them, such overplus shall be borne by the county.† In *Scotland* carriages are to be supplied in the same manner as they are supplied for the Queen's forces.‡

Rates to be paid for carriages.

If the expense exceed the rates, the overplus shall be repaid by the County Treasurer.

When any regiment is assembled for being trained and exercised, the captain or commanding officer of every company may put the men of his company under stoppages, not exceeding fourpence, (or in *Ireland* sixpence per day,) for providing them with linen, (in *Ireland* also stockings,) and other necessaries; and for the expense of repairing arms broken or damaged by such man's neglect; every such captain or commanding officer shall account with each man for such stoppage, and after having deducted what has been laid out, shall pay the sum remaining, (if any) into the hands of the man to whom the same belongs, before he is dismissed from training and exercise.§

Militiamen out for exercise may be put under stoppages for necessaries.

* That which follows this asterisk applies to England only.

† 42 Geo. III. c. 90, sec. 95; 49 Geo. III. c. 120, sec. 49.

‡ 42 Geo. III. c. 91, sec. 91; therefore refer to the annual Mutiny Act.

§ 42 Geo. III. c. 90, sec. 96; Idem, c. 91, sec. 92; 49 Geo. III. c. 120, sec. 47.

Returns of the Militia when called out to be exercised, to be made by the Colonel, &c. to the County-Lieutenant, &c.

The commanding officer of every regiment, &c., as often as his regiment, &c., is called out to exercise, and within fourteen days from assembling, is required to return to the Lieutenant, (or in *Scotland*, when two or more counties, &c., are joined to form a regiment, &c., the lieutenant of the county furnishing the greatest number of men to the regiment,) a true state of such regiment, and a duplicate to the clerk to the general meetings, to be filed or preserved among the proceedings thereof; and where the militia of any county, &c., shall be ordered to be trained and exercised in parts or proportions successively, the officer commanding every such part or proportion, within seven days after the assembling, is to make a return of the state of the militia exercised by him or under his command, to the commanding officer of the regiment, on pain of forfeiting *twenty pounds* for every omission; and the commanding officer receiving such returns, within fourteen days after all the returns of men who have been assembled have been received by him, must transmit a general return to the lieutenant of the county, &c.; (or in *Scotland*, where two or more counties, &c., have been joined together, to form a regiment &c., to the lieutenant of the county furnishing the greatest number of men,) and a duplicate to the clerk of the general meetings, to be filed; and in case any officer refuse or neglect so to do, for three months after the time for making such returns, he, for every offence, forfeits fifty pounds.*

Penalty for neglect.

In *Ireland*, the commanding officer of any regiment or battalion, called out for exercise, makes a similar return to the Chief Secretary of the Lord Lieutenant of Ireland, or other governors of Ireland, under a penalty of £100 for neglect, for one month, after the annual exercise.†

Captains of Companies to make out a Return in the form in the Schedule (F).

The captain or commanding officer of every company of militia called out to exercise, during the time of such exercise shall make out a correct and accurate return of the state of the classes of the men belonging to his company, arranged according to the form in the schedule to this Digest annexed, marked (F.), and shall deliver or transmit the same to the adjutant, or were there is no adjutant to the commanding officer of the militia, and such adjutant, or

* 42 Geo. III. c. 90, sec. 97; Idem, c. 91, sec. 93.

† 49 Geo. III. c. 120, sec. 46.

commanding officer, (as the case may be) must, within one month after every such exercise, prepare and make out a general and accurate return of all such classes, according to such form, and with such specification as aforesaid, and transmit the same to the clerk of the general meetings; and must also transmit to the clerks of the subdivision meetings, extracts of such return, containing the state of the classes of men belonging to their respective subdivisions; and such subdivision clerks must forthwith correct the books of enrolment, so as to correspond accurately with such return, and the clerk to the general meetings must forthwith, upon receipt of such return, and within two months after the expiration of such exercise, make out and transmit to one of His Majesty's principal Secretaries of State, correct abstracts of all such returns as aforesaid, made out in the form in the schedule marked (G.); and every person so required to make any such return, who refuses or neglects, for every offence forfeits fifty pounds.*

Clerk to the General Meeting to transmit to the Secretary of State an Abstract of Returns in the form in Schedule (G).

Penalty for neglecting to make Returns.

Any militiaman, (not labouring under any infirmity incapacitating him), who does not appear at the time and place appointed for his being exercised, (notice having been published and given,) or who, having joined, deserts or absents himself during exercise, is deemed a deserter, and if not taken until after the time of exercise, forfeits a sum not exceeding ten pounds: and also every man who having joined deserts or absents himself during the time of exercise, and is not taken until after the time of exercise, forfeits any sum not exceeding ten pounds; and if the penalty is not immediately paid, the justice before whom he is convicted of such offence shall commit him to the house of correction to hard labour, or to the common gaol, for three months, or until the penalty is paid.†

Men not appearing at exercise, or absenting themselves during that time, if not taken till after shall forfeit £10 or be committed for three months.

* 42 Geo. III. c. 90, sec. 98; Idem, c. 91, sec. 94. (This section is suspended whilst the ballot remains suspended; 17 and 18 Vict. c. 105, sec. 52).

† 42 Geo. III. c. 90, sec. 99; Idem, c. 9, sec. 95; 49 Geo. III. c. 120, sec. 42; modified by 17 and 18 Vict. c. 105, sec. 45; Militia (Scotland) Act, 1845, sec. 58; and 17 and 18 Vict. c. 107, sec 28. In the late English and Irish Acts it is also provided that any information under these sections may be laid at any time during the engagement of the offender in the militia.

Men absenting themselves, not taken within three months, others are to be balloted for.

In case any militiaman deserts or absents himself from his duty, and does not return and voluntarily surrender himself at the place where the arms of the regiment, battalion, or corps to which he belongs are deposited, or is not taken within three months from his so deserting or absenting himself, then upon certificate thereof from the commanding officer to any meetings for the subdivision for which such man was enrolled, the Deputy-Lieutenants are required to hold a subdivision meeting, and to ballot for another person to serve in the room of such militiaman; and in case such militiaman shall at any time thereafter return or be taken, he shall, notwithstanding any person shall have been chosen in his room, be compelled to serve for the same time, (in *Scotland*, the term to *re*-commence from the day when he returns or is taken,) as if no person had been so chosen in his room.*

Such men, when taken, compellable to serve.

Muskets to be marked, and if any men do not return them in good order they forfeit not exceeding £3 or are committed for not exceeding three months.

All muskets delivered for the service of the militia are marked distinctly in some visible place with the letter (M.), and the name of the county to which they belong. In *Ireland*, all arms and stores and accoutrements are so marked.† And in case any militia man sells, pawns, or loses any of his arms, clothes, accoutrements, or ammunition, or neglects or refuses to return the same in good order to his captain, or to the person appointed to receive the same, every such man, for every offence, forfeits not exceeding three pounds, or in *Ireland* five pounds; and if such man do not immediately pay such penalty, the justice before whom he shall be convicted commits him to the house of correction, to be kept to hard labour for any time not exceeding three months, or until penalty is paid.‡

Penalty for buying Militia Arms, &c.

If any person knowingly and wilfully buys, takes in exchange, conceals, or otherwise receives any militia arms, clothes, or accoutrements, or any articles belonging to any militia-man, generally deemed regimental necessaries, according to the custom of the army, or any public stores or ammunition whatever,

* 42 Geo. III. c. 90, sec. 100; Idem, c. 91, sec. 96. This only applies when the ballot is in force. The system in Ireland is different, for which *vide* 49 Geo. III. c. 120, secs. 112 to 116.

† 49 Geo. III. c. 120, sec. 37.

‡ 42 Geo. III. c. 90, sec. 101; Idem, c. 91, sec. 97; 49 Geo. III. c. 120, sec. 44; repeated in Militia (Scotland) Act, 1854, sec. 67.

delivered for the militia, upon any account or pretence whatsoever, the person offending forfeits and pays for every offence ten pounds, and if he does not immediately pay such penalty, and have sufficient goods whereon to levy, the justice before whom he is convicted must commit him to the common gaol for six months, with or without hard labour, or until the fine be paid.*

When the Militia is not embodied, Adjutants, &c. may be tried by a Court-Martial, and Serjeants, &c. for desertion while the Regiment was embodied, and not taken.

Every adjutant, serjeant-major, serjeant, corporal, drum-major, and drummer of the militia, is at all times subject to the annual Mutiny Act and the Articles of War, under the command of commandant, and the commandant of any militia. In *Ireland*, in his absence, the officer actually in command may direct the holding of courts-martial, for the trial of any serjeant-major, serjeant, corporal, drum-major, or drummer, by either a general or regimental court-martial, for any offence against the Act or Articles of War, committed during the time such regiment is not embodied; and for the trial of any serjeant, corporal, drummer, or private man, who deserted while the regiment was mbodied; and has not been apprehended till after disembodiment, but so that no punishment extend to the loss of life or limb.†

Commandant may order any Officers of the county, resident where the trial is to be, or within ten miles, to assist as members of Court-Martial.

If a sufficient number of officers to form a court-martial cannot be found, the commandant, and in his absence the senior field-officer, may order any officers of the militia of the county, (or in Scotland any officers of the prisoner's corps,) actually resident within the town where such serjeant-major, serjeant, corporal, drum-major, or drummer is to be tried; or within ten miles (in *Ireland* fifteen miles) thereof, to attend and assist as members of such court-martial, who shall thereupon attend at the time required, and assist accordingly; but no officer shall be entitled to receive pay for any such attendance; provided that no sentence shall be put in execution until it has been confirmed by the commandant, or by the field officer, whose order assembled the court.‡

Sentence confirmed by the Colonel, &c.

* 42 Geo. III. c. 90, sec. 102; Idem, c. 91, sec. 98; 49 Geo. III. c. 120, sec. 45; modified by 17 and 18 Vic. c. 105, sec. 48; Idem, c. 106, sec. 68; and Idem, c. 107, sec. 32.

† 42 Geo. III. c. 90, sec. 103; Idem, c. 91, sec. 99; 49 Geo. III. c. 120, secs. 27 and 30.

‡ 42 Geo. III. c. 90, sec. 104; Idem, c. 91, sec. 100; 49 Geo. III. c. 120, sec. 30.

Non-Commissioned Officers, &c. may be reduced to privates.

Any serjeant, corporal, or drummer, may, by sentence of a court-martial, (and in Ireland, by order of the colonel of the regiment,) be reduced to a private, to serve during any time, not exceeding fifteen months, in case the regiment or battalion is not then embodied or in actual service; and in case the regiment is then embodied or in actual service, to serve until the disembodying of the regiment; after which time, or at the end of the fifteen months, as the case may be, if not regularly reappointed to the rank of a non-commissioned officer or drummer, he shall be discharged from the service.*

Arms, &c. when the Militia is not embodied, to be kept in a place appointed.

The arms, accoutrements, clothing, and other stores, belonging to every regiment not embodied, shall be kept in such convenient place as the commandant directs, with the approbation of the lieutenant of the county (in Ireland, with that of the Lord-Lieutenant or governors of Ireland), under the charge of the adjutant; "and the general meeting may order and direct a "convenient and proper place for that purpose to be provided "or built, the hire or cost of which place shall be paid for out of "the county rates."†

Non-Commission Officers and Drummers to reside where the Arms are kept, under command of the Adjutant.

All the serjeants, corporals, and drummers, in every regiment of militia, (in Ireland the adjutant and one-third of these non-commissioned officers,) must be constantly resident within the city, town, or place where the arms are kept, and under the command of the adjutant; who also is constantly resident within the city, town, or place, (unless as hereinafter provided), and act in such command under the orders of the commandant of the regiment. The adjutant, and in his absence the serjeant-major, or (where there is no serjeant-major) the senior serjeant makes monthly returns of the true state of the serjeants, corporals, and drummers to Her Majesty's Secretary of State, to the lieutenant, and to the commandant; in default of which, on such neglect, the adjutant or serjeant-major is subject to the punishment a court-martial adjudges; no serjeant, corporal, or drummer, can be absent from such place, without a regular furlough or licence in

* 42 Geo. III. c. 90, sec. 105; Idem, c. 91, sec. 101; 49 Geo. III. c. 120, sec. 31; repeated in Militia (Scotland) Act, 1854, sec. 57.

† 42 Geo. III. c. 90, sec. 106; Idem, c. 91, sec 102; 49 Geo. III. c. 120, sec. 38. The latter part of this section is now much modified, see *post*, p. 344, *et seq.*

writing, signed by his commandant; and every serjeant, corporal, and drummer, absent on furlough or licence, shall respectively receive during the time of such absence the pay following, (that is to say), every serjeant the sum of one shilling, every corporal the sum of eight-pence, and every drummer the sum of sixpence per day; and every serjeant, corporal, and drummer absent without furlough or licence, forfeits all pay during absence, and is liable to be punished as a deserter; and such adjutant can never absent himself from a place, without leave of the commandant, nor for more than three calendar months in one year, except in case of sickness; nevertheless, whenever the adjutant is absent with leave, then the serjeants, corporals, and drummers, are under the command of the battalion clerk, if a commissioned officer of the regiment, &c., or otherwise of the serjeant-major, or of some serjeant appointed by the adjutant, with the approbation of the commandant, to act as serjeant-major during the absence of such adjutant, or of the senior serjeant, when the corps has not any adjutant or serjeant-major.*

Serjeants, &c. absent on leave to receive Pay.

Adjutant not to be absent without leave.

Sections 108, 109, relating to the apprehension of deserters; and the corresponding sections in the Scotch and Irish Acts, are now otherwise provided for.

If any person harbour, conceal, or assist any deserter, knowing him to be such, he shall forfeit five pounds.†

Persons assisting Deserters to forfeit £5.

In all cases of actual invasion, or upon imminent danger thereof, and in all cases of rebellion or insurrection, or during a state of war,‡ it shall be lawful for His Majesty, (the occasion being first communicated to Parliament, if the Parliament is then sitting, or declared in Council and notified by proclamation, if no Parliament is then sitting or in being,)§ to order and direct the

His Majesty may order the Militia to be embodied in all cases of Invasion, Rebellion, and a State of War.

* 42 Geo. III. c. 90, sec. 107; Idem, c. 91, sec. 103. For similar provision as regards Ireland, see 49 Geo. III. c. 120.

† 42 Geo. III. c. 90, sec. 110; 49 Geo. III. c. 120, sec. 43; 42 Geo. III. c. 91, sec. 106.

‡ 17 Vic. c. 13, sec. 1. In the Scotch Act the words are, "in all cases of foreign war;" Militia (Scotland) Act, 1854, sec. 57.

§ These words are omitted in the Scotch Militia Act, 1854, but they are not expressly repealed. *Vide* Militia (Scotland) Act, 1854, sec. 47.

lieutenants; or on death, removal, or absence from their counties, any three or more deputy-lieutenants, with all convenient speed, to draw out and embody all the regiments, battalions, and corps of militia, within their respective counties, or so many of them, or such part or proportion of them or any of them, as Her Majesty shall, in her wisdom, judge necessary, and in the manner best adapted to the circumstances of the danger; and to put the forces under the command of such general officers as His Majesty shall be pleased to appoint, and to direct the forces to be led by their respective officers into any parts of the United Kingdom, for the repelling and prevention of any invasion, and for the suppression of any rebellion or insurrection within the United Kingdom; and from the time of any militia being called out and embodied, until the same returns again to its own county and is disembodied, the officers, non-commissioned officers, drummers, and privates, are subject to the annual Mutiny Act and the Articles of War, while embodied. In Ireland these powers are vested in the Lord Lieutenant or chief governor of Ireland.*

In England, the Queen, (in case of actual invasion or imminent danger thereof, or during a state of war—the reason being first communicated to Parliament—if Parliament be then sitting—or declared in Council, and notified by proclamation, if Parliament be not sitting or in being,)—may by proclamation raise the militia to any number not exceeding 120,000. The lieutenants and deputies must forthwith proceed to raise and enrol the additional men specified in the proclamation. The militia laws apply to the men so raised. By a similar process the Queen may reduce the whole or any part of such additional men.†

Section 112, and similar sections in the other general Acts, are repealed.

When Her Majesty orders the Militia to be embodied

Whenever Her Majesty causes the militia to be drawn out and embodied, (and in England, an additional number of men to be raised or enrolled,) if the Parliament then be separated by an

* 42 Geo. III. c. 90, sec. 109; Idem, c. 91, sec. 107; 49 Geo. III. c. 120, sec. 55; and Militia (Scotland) Act, 1854, sec. 47.

† 15 & 16 Vic. c. 50, sec. 30; 17 Vic. c. 13, sec. 1. There is no similar provision in the Irish Acts.

adjournment or prorogation that will not expire within fourteen days, Her Majesty must issue a proclamation for the meeting of the Parliament within fourteen days, and the Parliament shall accordingly meet and sit upon the day appointed by the proclamation, and continue to sit as if it had stood adjourned or prorogued to the same day.* Her Parliament must meet in fourteen days.

The lieutenant of every county, or (on death, removal, or absence from his county,) any three or more deputy-lieutenants; (in Ireland, the governor or three deputy-governors), to whom any order from Her Majesty, (or in Ireland, from the Lord Lieutenant, &c.); for drawing out and embodying the whole of the militia of such county shall be directed, are forthwith to issue orders to the chief constables or other officers of the several divisions; (or in Ireland, parishes and places in the baronies,) with directions to forward the same immediately to the constables or other officers of the several parishes within their respective divisions; and such constables or other officers are required upon the receipt thereof, forthwith to cause notice in writing to be given to the several militia-men, or left at their usual abode, to attend at the time and place mentioned in such order.† 17 Vic. c. 13, sec. 4, enacts that in England, when the militia is embodied and drawn, whenever a state of war exists, the notices to attend shall be sent by the commanding officer, by post, to the residences of the men, and such notices are sufficient in all respects; and men not appearing are to be deemed to have disobeyed the order, and those harbouring or concealing to come under 42 Geo. III. c. 90, sec. 116. When the Militia is to be drawn out the Lieutenants issue orders accordingly, and the Constables cause notice to be given.

No officer serving in the militia can sit in any court-martial upon the trial of any officer or soldier serving in any of Her Majesty's other forces; nor can any officer serving in Her Majesty's other forces, sit in any court-martial upon the trial of any officer or soldier in the militia. In Ireland, it is provided that any officer serving in the militia, and at the same time on the half- Militia Officers not to sit on Trials of Regulars.

* 42 Geo. III. c. 90, sec. 113; Idem, c. 91, sec. 109; 15 & 16 Vic. c. 50, sec. 31.

† 42 Geo. III. c. 90, sec. 114; Idem, c. 91, sec. 110; 49 Geo. III. c. 120, sec. 56.

pay of the army, may sit on the courts-martial of the army; but this does not seem to be the case in England and Scotland.*

Militiamen not marching deemed Deserters.

If any person of the militia, ordered to be drawn out and embodied, (not under any infirmity incapacitating him to serve,) does not appear and march in pursuance of such order, he is liable to be punished as a deserter according to the Mutiny Act; and in England and Scotland, by the Articles of War also; and if any person shall harbour and conceal any man ordered to be drawn out and embodied, knowing him to be such, he shall forfeit £100; or in Ireland £5.†

Militia drawn out entitled to pay as Infantry, and maimed or wounded to Chelsea Hospital.

From the date of Her Majesty's warrant for drawing out the militia *into actual service*, the officers and men are entitled to the same pay as the officers and men of other infantry forces, and no other; and any non-commissioned officer, drummer, or private, maimed or wounded in actual service, is equally entitled to the benefit of Chelsea Hospital as those of any other force; and in the Irish militia to Kilmainham; but if the pay of the army is increased, this will not entitle the militia to increased pay.‡

Pay of Officers and Men commences only from day of joining.

The pay of every officer and man (in the *English* and *Scotch* militia,) who does not join on the day appointed, shall commence only from the day of his joining, unless prevented by sickness or other inevitable necessity, proved to the satisfaction of the commanding officer, in which case such officer or man may, by order of his commanding officer, be accounted with for his pay from the date of warrant.§

Pay of Men enrolled after Militia embodied to com-

In *England* and *Scotland* the pay of every person enrolled, after such militia shall have been embodied and called out into actual service, shall commence upon the day on which he joins,

* 42 Geo. III. c. 90, sec. 115; Idem, c. 91, sec. 111; 49 Geo. III. c. 120, sec. 32.

† 42 Geo. III. c. 90, sec. 116; Idem, c. 91, sec. 112; 49 Geo. III. c. 120, sec. 56.

‡ 42 Geo. III. c. 90, sec. 117; Idem, c. 91, sec. 113; 49 Geo. III. c. 120, sec. 57; and 46 Geo. III. c. 140. The Militia Pay Acts apply only to disembodied militia.

§ 42 Geo. III. c. 90, sec. 118; Idem, c. 91, sec. 114.

and not before; provided that the deputy-lieutenants or justices of the peace by whom such persons shall have been enrolled, do order and direct an allowance to be made to such person to enable him to proceed and join; not exceeding the rate of the pay of so many days as would enable him to march from the place where he was enrolled to the place where his corps may be stationed, to be calculated at the rate of not less than ten miles per day, with the usual number of halting days; and in Scotland, sea-passage and ferry-money; and the allowance is advanced at the time of enrolment by the clerk of the sub-division meeting, under the order of the deputies or justices aforesaid, or one of them, to be repaid to the clerk by the receiver-general of the land tax, on the production of a certificate to that effect, signed by the deputies or justices, or one of them; and the receiver-general is allowed for the same in his accounts.*

Commence from the day of joining, but allowance to enable them to march.

When any militia is drawn into actual service, and during actual service, the commandant (in Ireland the colonel) appoints an agent, and takes security from such agent; and such commandant, (in England and Scotland,) is subject and liable to make good all deficiencies by the agent or himself of pay, clothing, or public stock of such regiment, battalion, or corps; but in Ireland the colonel is merely directed to take security from the agent.†

When a Regiment is drawn out, an Agent to be appointed.

When the militia is ordered into actual service, the receiver-general in *England*, or the collector of the land-tax in *Scotland*, is required forthwith to pay to the commanding officer of every company so ordered out, one guinea for the use of every private in his company; and the receiver-general also pays to every commanding officer of a company, one guinea for every recruit, as early as may be after such recruit joined, while out in actual service, (all which money so paid by the said receiver-general is allowed him in his accounts); and the money so received by any commanding officer, or so much as such commanding officer shall think proper, is to be laid out as he thinks most advantageous for

When Militia ordered out, Receiver-General to pay to each Captain one guinea for each Man and also for each Recruit.

* 42 Geo. III. c. 90, sec, 119; Idem, c. 91, sec. 115.

† 42 Geo. III. c. 90, sec. 120; Idem, c. 91, sec. 116; 49 Geo. III. c. 120, sec. 58.

Captains to account with the men for the same.

the respective men; and such commanding officer, on or before the twenty-fourth day of the month next ensuing, accounts to such man how the guinea hath been applied and disposed of, and at the time of settling account, pays the remainder of the money, (if any,) to the said man.* In *Ireland*, the guinea is paid to the order of the colonel, by the collector of excise, laid out by the order of the colonel, and accounted for on the discharge of the militia-man.†

Half the price of Volunteers shall be paid by the Parish Officers to persons chosen by ballot who shall serve or provide a Substitute on their making oath that they are not worth £500.

In *England*, in case any person not possessed of any estate in land, goods, or money, of five hundred pounds, and who makes oath that he is not possessed, be chosen by ballot to serve in the militia for any parish, where the militia is drawn or ordered out for actual service, and be approved, sworn, and enrolled, or shall provide a fit substitute; the churchwardens or overseers of the poor, on receiving an order under the hands of any two or more deputies acting within the subdivision wherein the parish is situate, pay to every person so chosen by ballot, any money not exceeding the sum which such deputy adjudges, to be as near as may be one half of the current price then paid for a volunteer or substitute in the county, which money shall be taken out of the rate made for providing volunteers; or in case no volunteers are provided by the churchwardens or overseers, then out of a rate made agreeably to the poor's rate; and in case any churchwarden or overseer of the poor refuse or neglect to pay such money upon demand and production of such order, he forfeits ten pounds, one half to the person chosen by ballot, in lieu or in part of the sum ordered to be paid him, as the case may require; provided if any man so chosen by ballot, and serving for himself, within one month after enrolment be disapproved of and discharged by the officer commanding, such sum is not to be paid to the person, but is paid to the next person chosen by ballot in his stead. No sum is paid to the man chosen by ballot, whose substitute is disapproved and discharged, unless he serve himself or find another substitute, approved by the commanding officer.‡

Any person chosen by ballot and disapproved, the allowance shall not be paid.

* 42 Geo. III. c. 90, sec. 121; Idem, c. 91, sec. 117.
† 49 Geo. III. c. 120. sec. 59.
‡ 42 Geo. III. c. 90, sec. 122.

In *England* and *Scotland*, whenever any regiment is embodied, and absent from the county to which it belongs, the commanding officer can apply to every man chosen by lot, whose time is within four months of expiring, and who, in his judgment, and after an examination by the surgeon of the regiment, is still fit to serve, and enquire if he is willing to continue in the service for the term that a man then ballotted to serve would be subject to, and for what price or sum he will so continue; and the commanding officer, on the first day of the months of January, March, May, July, September, and November respectively, or as soon after as conveniently may be, transmits to the clerk of the general meetings, a list of all men he shall find willing to continue in the service; in which list shall be set down the sums they are respectively willing to continue for, and which list shall be signed by every such militiaman as aforesaid, and shall be made in the following form, videlicet:— When a Regiment out of its county, men whose time within four months of expiring may continue in service.

Dated the day of

Name of the County.	Names of the Men.	Of the Parish of	In the Hundred or other Division of	Time of service expires on the	Sum for which they engage to serve.	Signature of Consent.
	A. B.	P.	H.			A. B.
	E. F.	Q.	I.			E. F.
	G. K.	R.	N.			G. K.

And that the signing of the list shall be binding upon the persons signing.*

The clerk of the general meeting, as soon after the receipt of such notices as can be done, transmits to the respective clerks of the sub-division meetings, correct extracts of such returns, specifying in every such extract the men that have been enrolled for the subdivision; such deputy-lieutenants, if they shall think fit, cause the men willing to continue to serve to be enrolled as volunteers; and in *England*, direct and require the churchwardens Clerk of General Meetings to transmit to the Clerks of the subdivisions Extracts of Returns.

* 42 Geo. III. c. 90, sec. 123; Idem, c. 91, sec. 118.

or overseers of the poor of such parish, to remit the bounty to be given to such men to the paymaster of the regiment, who forthwith pays or accounts to the men for the same. In *Scotland*, men are ballotted for, if the ballot exists, to serve in the room of the men so enrolled as voluuteers, and the ballotted may appoint the volunteers their substitutes, and on their transmitting the bounty to the paymaster, are in the same situation as others who have found substitutes.*

When term prolonged beyond five years, bounty paid.

In case the term of service of any person chosen by lot and enrolled be prolonged beyond the term of five years, then and in such case the receiver-general for the county, (in *Scotland* the collector of the land-tax,) is required forthwith to pay to the commanding officer of each company respectively, one guinea for every person whose time is so prolonged; and as often as the term of service of any person chosen by lot and enrolled and prolonged, to pay a further guinea (all which money, paid by the receiver general, or collector of land tax in Scotland, is allowed him in his account); and the money so received by any commanding officer, or so much as such commanding officer thinks proper, shall be laid out as he thinks most advantageous; and such captain or commanding officer, on or before the twenty-fourth of the month next ensuing, accounts to such person how the said sum has been applied and disposed of, and at the time of settling such account pays over to him any remainder.†

Also for Substitutes or Volunteers whose term is so prolonged.

In case the term of service of any substitute, hired man, or volunteer, by reason of the militia being embodied, continue beyond the term of five years, the receiver-general for the county, or in *Scotland* the collector of land-tax, is required forthwith to pay the captain or other commanding officer of each company respectively, the one guinea; and in case such term continue for more than three years beyond the said term of five years, then, at the expiration of the said three years, the receiver-general pays a further guinea; and at the expiration of every additional three years, pays a further guinea, to be allowed the receiver-general, or in *Scotland* the collector of land-tax, in his account);

* 42 Geo. III. c. 90, sec. 124; Idem. c. 91, sec. 119.
† 42 Geo. III. c. 90, sec. 125; Idem, c. 91, sec. 120.

and the money so received, as such captain or commanding officer shall think proper, laid out as he thinks most advantageous for each respective man; and such captain, on or before the twenty-fourth of the month next ensuing, accounts to such man how the sum has been applied and disposed of; and at settling the account pays over to such man any remainder.*

Any Substitute or Volunteer not joining, or deserter or absentee, may be adjudged further service in Militia or Army.

If any person sworn and enrolled, either as a substitute or volunteer, (not under any infirmity incapacitating him to serve), does not with due diligence join, (in case his regiment, battalion, or company, be then embodied), according to order given him by the lieutenants, deputy-lieutenants, or any officer of a regiment, or any person authorized to give such order, or if any person serving in any embodied militia as a substitute or volunteer, or any serjeant, corporal, drummer, desert or absent himself from his duty, every such serjeant, corporal, drummer, or private, is liable to be punished according to the Mutiny Act and the Articles of War; and may, by a general court-martial, be adjudged to further service for some period limited, or to service without limitation as to the period or place of such service; and in case the court adjudge to serve in Her Majesty's other forces, and the sentence be approved by Her Majesty, by order under the hand of the Secretary at War, or his deputy, to cause such man, if found fit for general service on examination by a surgeon, to be entered as a private soldier, to serve in a regiment or corps, directed in such order or for general service, and to be forthwith conveyed either to head quarters or to the head quarters for recruits belonging to regiments on foreign stations; and from the time of his being delivered to be subject to the Mutiny Act.†

Three months vacances to be filled up by ballot.

Whenever the whole number of persons enrolled for any county, has been ordered to be drawn out and embodied, and in case any make default, either by not appearing or by desertion or absence from duty, and shall not be taken within three months

* 42 Geo. III. c. 90, sec. 126; Idem, c. 91, sec. 121.

† 42 Geo. III. c. 90, sec. 127; Idem. c. 91, sec. 127. These special provisions are not inserted in the Irish Act, but volunteers and substitutes being sworn as militiamen are under similar penalties; 49 Geo. III. c. 120, secs. 106, 107, 108.

from default, desertion, or absence, then a vacancy shall be declared by the first subdivision meeting next after the receipt of the certificate of such default, desertion, or absence, under the hand of the officer commanding, and the vacancy forthwith filled up by a fresh ballot.*

If Her Majesty order the Militia, or a proportion thereof to be embodied, the County Lieutenant, &c., issues order.

As it may be expedient that only a proportion of the militia should be drawn out and embodied in the first instance, and the appointment of the privates to constitute such proportion should be decided by ballot in each subdivision or district, without assembling them previously out of the subdivision or district, the lieutenant, or (in case of vacancy or absence from his county) any three or more deputy-lieutenants, to whom any order for embodying shall have been directed, as soon after the receipt thereof as conveniently may be, issue their order to the clerks of the several subdivision meetings, to make out a list of all persons enrolled within each subdivision, arranged according to classes, before a day specified in the order of the lieutenant or deputy-lieutenants, and which day, not later than three days after date of order; and the clerks shall, within the time fixed by such order, make out lists accordingly, and also two duplicates, one for the deputy-lieutenants at their subdivision meetings, and the other transmitted to the clerk of the general meetings, for the lieutenant, or deputy-lieutenants who issued the order.†

He also issues orders for assembling the men within their respective subdivisions.

The lieutenant or deputy-lieutenants, to whom Her Majesty's order shall be directed at the time, issue their order for assembling the men within their respective subdivisions, or at such places and in such proportions as the lieutenant or deputy-lieutenants shall think most expedient, on the days specified in their order, to the chief constable, (or in *Scotland* to the schoolmaster, constable, and officers of the parish, &c.,) with directions immediately to issue precepts conformable thereto to the constables of parishes; and such constables, (and in *Scotland* schoolmasters, &c.,) are required, upon receipt thereof, forthwith to cause notice in writing to be given to the several men of the militia, or left at their usual abode, to attend within their

* 42 Geo. III. c. 90, sec. 128; Idem, c. 91, sec. 123.
† 42 Geo. III. c. 90, sec. 129; Idem, c. 91, sec. 124.

respective subdivisions or districts, at the time and place mentioned in order, and cause a like notice thereof to be affixed on the doors of the churches or chapels, or (if any place shall have no church or chapel) on the door of the church or chapel of some place adjoining, which shall be deemed sufficient notice, notwithstanding any omission in the delivery of written notices; and all such militiamen shall duly attend.*

Men not appearing, &c., deemed Deserters, &c.

If any person of the militia, not under infirmity incapacitating him to serve, does not appear, or appearing does not abide the orders of the deputy-lieutenants attending, every such person is deemed a deserter, and if not taken previously to the completion of the ballot at which he ought to attend, forfeits ten pounds, and is deemed to be a person liable to be embodied, and to serve over and above the number chosen by ballot.† In *Ireland* the penalty is *five* pounds, or six months imprisonment, unless sent for by his commanding officer sooner; a reward, also, is paid for apprehension.

County Lieutenant &c., to appoint the first subdivision meeting for balloting, and the time and place for assembling the men chosen.

The lieutenant or deputy-lieutenants of every county, or any three or more of them, appoint the first meeting to be held by the several deputy-lieutenants within their respective subdivisions; or at such other places as have been appointed, on the day mentioned in such order, for assembling the men, in order to their being chosen or ballotted to serve; and also appoint the time and place of assembling, in order to their being embodied; of which several appointments the respective deputy-lieutenants have notice; and all the men enrolled on the list of every such subdivision or district, and appearing on the day appointed, then mustered by the deputy-lieutenants; the deputy-lieutenants at such meeting proceed to cause a number of the men so appearing to be chosen or ballotted for, equal to the proportion of the complete number that had been or ought to be enrolled, on the list of such subdivision or district, specified in the Queen's order for embodying, and cause the persons chosen and ballotted to be marked on the list of such subdivision or district; and when the

* 42 Geo. III. c. 90, sec. 130; Idem, c. 91, sec, 125; 49 Geo. III. c. 120, sec. 114.

† 42 Geo. III. c. 90, sec. 131; Idem, c. 91, sec. 126.

choice and ballot is concluded, the deputy-lieutenants cause the list of such subdivision or district to be publicly called; and as a name is read, then and there declare whether such person is or is not ballotted out of the list; and the names of all the persons ballotted are returned to the lieutenant of the county, or to the deputy-lieutenants who gave the order. The person chosen and ballotted is embodied to serve; and the deputy-lieutenants openly declare to the men chosen or ballotted, the time and place of their assembling, being embodied. Every person declared to be chosen or ballotted, must immediately proceed to, and duly attend at the time and place appointed, in order to his being embodied; and every person declared not to have been chosen is discharged from further attendance.*

Deputy Lieutenants may correct classes.

The deputy-lieutenants in their several subdivision meetings, before they proceed to choose or ballot may revise and correct the names contained, according to the changes or alterations since the last revisal.†

When Her Majesty shall order only a part of any Militia to be embodied, the Deputy Lieutenants shall examine the classes.

Whenever Her Majesty shall think fit to draw out and embody a part or proportion only of the militia of any county, the deputy-lieutenants in their several subdivisions, before they proceed to choose or ballot for the private men who are to form a proportion, examine the classes, and in every case in which the proportion required to be called out in such subdivision equals the number of men contained in such first, or first and second, or other succeeding classes in their order, then the men are forthwith chosen without any ballot; and when the proportion of men required is less than the number contained in first class, then such proportion is ballotted for out of such class only; when the proportion required exceeds the number contained in the first, or first and any succeeding, in the order in which they stand, the Deputy-Lieutenants first choose all in the first class, or first and next succeeding class or classes, until such proportion be as near as may be completed, and then proceed to ballot for the remainder of the proportion, out of the class immediately following. And the Deputy-Lieutenants proceed in like manner for supplying any

Mode of Ballot.

* 42 Geo. III. c. 90, sec. 132; Idem, c. 91, sec. 127.
† 42 Geo. III. c. 90, sec. 133; Idem, c. 91, sec. 128.

further proportion, in case any further part should be ordered to be embodied; and during the time that proportion only remains embodied, supply all vacancies out of the classes as they stand in succession; and in no case ballot for any vacancy out of any class, until all the men contained in the preceding classes, able and fit to join, have been chosen.*

If any person enrolled in any subdivision of a county, the Militia whereof be embodied, desert or be absent three months, a fresh ballot.

Whenever the militia or proportion of any county, have been ordered to be embodied, in case any persons enrolled in any subdivision, (the militia whereof be ordered to be embodied,) make default either by not appearing, or by desertion or absence from duty, and be not taken within three months from default, then a vacancy shall be declared by the deputies, at their first meeting for the subdivision for which the defaulter was enrolled next after the receipt of the certificate of default, desertion, or absence; and the vacancy must be forthwith filled up by a fresh ballot.†

Who may be accepted as a Volunteer.

If any person enrolled and not chosen or ballotted, who shall not have any child living under fourteen years, and who shall not be more than thirty-five years of age, offer himself as a volunteer, to be embodied in the room of any person chosen or ballotted, the deputy-lieutenants, at any meeting, may accept such volunteer in the room of such person chosen or ballotted, and the person accepted shall serve.‡

Allowance to men attending at the Ballot, and not chosen.

Every man of the said militia who shall appear and attend at the ballot, and not chosen or ballotted, entitled to an allowance of one shilling *per diem*, during the time he is from home, in going to and continuing at and returning from the place appointed for ballot, not to exceed three days, to be paid by the clerk of the subdivision, or other meeting in which such men enrolled; and on the certificate of the number of men so paid, the receiver-general of the county, (or in Scotland the collector of the land-tax), shall reimburse to the clerk the sums paid, out of any monies in his hands, by way of land-tax.§

* 42 Geo. III. c. 90, sec. 134; Idem, c. 91, sec. 129; 49 Geo. III. c. 120, sec. 107.

† 42 Geo. III. c. 90, sec. 135; Idem, c. 91, sec. 130; 49 Geo. III. c. 120, sec. 108.

‡ 42 Geo. III. c. 90, sec. 136; Idem, c. 91, sec. 131.

§ 42 Geo. III. c. 90, sec. 137; Idem, c. 91, sec. 132.

Clerks may draw for money to pay Allowances.

The clerks of the subdivision or other meetings are authorized to draw on the receiver-general (or in Scotland the collector) of the land-tax for the county, for such money as the deputy-lieutenants and justices of the peace, or where no deputy-lieutenant attends, then as one justice of the peace by any order under hand, direct and appoint, which money must be applied by the clerks for paying the allowances; and the receipt of any such clerk, together with such order, shall be to the said receiver-general, or the collector, a sufficient discharge, and be allowed in his account.*

Clerks, when required, to make out accounts of monies received.

The clerk of each subdivision or other meeting, when required by such deputy-lieutenants and justices of the peace, or where no deputy-lieutenant attends then by one justice of the peace, make out an account of the money by him received and paid, to be by them examined, allowed, and signed; and the account so examined, allowed, and signed, is the proper voucher and acquittal of the clerk.†

Her Majesty may order the remainder of the militia to be embodied.‡

When Her Majesty shall order any further proportion of the militia to be embodied, the County Lieutenant and other officers shall pursue the rules prescribed for embodying the first proportion.§

Any Militia not embodied may be drawn out to be mustered, trained, and exercised.

If, during such time, any part of the militia which is embodied shall continue embodied, Her Majesty shall deem it expedient that the militia of any county which is not at the time actually embodied, should be drawn out, in order to be mustered, trained, and exercised, for a limited time, instead of being embodied, Her Majesty may direct the lieutenants or deputy-lieutenants of all or any of the said counties to cause the militia not actually embodied, or any part, to be drawn out to be mustered, trained, and exercised, in such proportion, time, and place, appointed

* 42 Geo. III. c. 90, sec. 138; Idem, c 91, sec. 133.
† 42 Geo. III. c. 90, sec. 139; Idem, c. 91, sec. 134.
‡ 42 Geo. III. c. 90, sec. 140; Idem, c. 91, sec. 135.
§ 42 Geo. III. c. 90, sec. 141; Idem, c. 91, sec. 136.

with the approbation of Her Majesty, by the lieutenant or deputy-lieutenant.*

Regulation for attendance of Officers, &c., on embodying Militia.

Whenever the whole of the militia of any county is ordered to be embodied, all the officers, non-commissioned officers, and drummers, shall immediately join at the time and place appointed for the embodying; and whenever the militia of any county is embodied by detachments or divisions under any order for that purpose, Her Majesty may order the proportion and description of officers, non-commissioned officers, and drummers, to accompany them, and the respective establishments; and also to regulate the numbers and duties of all officers, serjeants, corporals, and drummers, remaining within any such county, for mustering, training, and exercising the remainder.†

Her Majesty may disembody the Militia, &c.

Her Majesty may disembody any part or proportion of any militia of any county, embodied; and from time to time again embody any such militia, so disembodied, or any proportion.‡

Militia disembodied subject to orders only as before drawn.

When the militia, or any part in actual service, are again disembodied, and the officers and men dismissed, the officers, non-commissioned officers, drummers, and privates, are subject to the same orders, directions, and engagements only, as they were subject before they were in actual service.§

Sections 146, 147, and 148, relating to the calling out of the militia in cases of rebellion, are superseded by similar provisions in later statutes, and have been noticed in the proper place. *See* Index.

The powers given with respect to Northumberland to extend to Berwick-upon-Tweed.

All the powers of the county of Northumberland and militia extend to Berwick-upon-Tweed and the liberties of the persons returned in the lists for Berwick-upon-Tweed. A number of men are chosen by ballot to serve for the town, in the same proportion

* 42 Geo. III. c. 90, sec. 142; Idem, c. 91, sec. 137.

† 42 Geo. III. c. 90, sec. 143; Idem, c. 91, sec. 138.

‡ 42 Geo. III. c. 90, sec. 144; Idem, c. 91, sec. 139; 41 Geo. III. c. 120, sec. 140.

§ 42 Geo. III. c. 90, sec. 145; Idem, c. 91, sec. 140; 49 Geo. III. c. 120, sec. 60.

with the men for other divisions; and if persons can be found in the town and liberties, with qualifications required for deputy-lieutenants and officers, the chief magistrate of Berwick-upon-Tweed can appoint five deputy-lieutenants, and a number of officers proportional to their quota; and the lieutenant of the county, and deputy-lieutenants, and all other officers and persons of the county, are required to put the act into execution, but subject to the same penalties as those inflicted upon deputy-lieutenants and other officers acting, but not being duly qualified. The militia for the said town may join the militia of Northumberland, and exercise together, and in actual service form part of the militia of Northumberland.*

Governor of Isle of Wight to appoint officers, &c., of that Militia.

The Militia of the Isle part of the Militia of Southampton.

The ordering the militia of the Isle of Wight has always been in the governor or lieutenant-governor of the said island. After the number the island is to furnish to the militia of the county of Southampton shall be appointed, the governor of the island appoints the officers of the island, and is empowered to act in the same manner as Her Majesty's lieutenants of counties, and appoint five or more deputies and officers qualified in the same manner, and empowered and required to act in the same manner, and under the same directions as deputy-lieutenants and officers in Wales; and the militia of the island is raised in the same manner, and deemed a part of the militia of the county. The governor, lieutenant-governor, and deputies, order and direct the training and exercising in the island.†

Craike part of the North Riding, Maker lying in Cornwall part of that county, Wokingham part of Berks, Filey of the East Riding, Threapwood of Flintshire, and Stamford-baron of Lincolnshire.

The constabulary of Craike, deemed part of the North Riding; that part of the parish of Maker, which lies in the county of Cornwall, part of Cornwall; the town and the parish of Wokingham deemed part of Berks; and the township of Filey deemed to be part of the East Riding; and Threapwood deemed to be part of the parish of Worthenbury, Flint; the parish of Saint Martin, called Stamford Baron, in the suburbs of Stamford, deemed to be part of the county of Lincoln.‡

* 42 Geo. III. c. 90, sec. 149.
† 42 Geo. III. c. 90, sec. 150.
‡ 42 Geo. III. c. 90, sec. 151.

The towns and places deemed to be part of the several counties subject to the jurisdiction and authority of the lieutenants, deputy-lieutenants, justices, and other officers of the respective counties within which such towns and places are deemed to be.* Subject to the authority, &c., of the Lieutenants of those counties.

Sections 153 and 154, as they relate only to the local militia of London, the Tower Hamlets, and the Stannaries, are omitted.

The Warden of the Cinque Ports, two ancient towns, and their members, and in his absence his lieutenant or lieutenants, act in like manner as lieutenants of counties and their deputy-lieutenants may do; and shall keep up and continue the usual number of soldiers in the said ports, towns, and members, unless he or they find cause to lessen the same; and the militia of the ports remains separate from the militia of the counties within which the ports are situate; and the said Warden or his lieutenants, in pursuance of orders from His Majesty, prescribed by 13 and 14 Charles II, notwithstanding one or more months' pay advanced be not reinbursed, to raise and draw out the soldiers into actual service, and to cause the persons charged by the act, to provide their soldiers with pay in hand, not exceeding one month's pay, in such manner as if all the pay advanced and provided had been reimbursed; and to use the like powers, and to array, assess, and arm, muster, and exercise the said soldiers, and to make assessments, and issue warrants for the assessments made or to be made for raising any trophy money, and for defraying the necessary charges of trophies, and other incident expenses of the militia of the said ports, towns, and members, as hath been heretofore used, and according to their ancient privileges and customs.† Warden of the Cinque Ports, and his Lieutenants, act as County Lieutenants and their deputies. Militia of the ports separate from the Militia of the counties.

For the different rapes in Sussex and East Kent there are no peace officers; and the rapes in the said counties are the most convenient districts to be appointed as the subdivisions, and contain within their boundaries several hundreds, to each of Churchwardens and overseers in Sussex and Kent to make returns, and have the

* 42 Geo. III. c. 90, sec. 152.
† 42 Geo. III. c. 90, sec. 155.

same powers as constables in other places.

which there is a peace officer belonging. It is more expedient that balloting for men for Sussex and Kent be by division of parishes, to which division there are no peace officers. Lieutenant, or on death, removal, or absence, any three or more deputy-lieutenants of Sussex and Kent respectively, issue orders to the chief constable of the several hundreds in the rapes in the said counties where their subdivisions may be, directing such chief constables to issue precepts and orders to the churchwardens or overseers of the poor of each parish, within their respective hundreds or other divisions to return; and the churchwardens and overseers of the poor to whom such precepts and orders are issued, be deemed the constable, tything-man, headborough, or other officer of any parish.*

County Lieutenants, &c., to transmit certain returns to the clerks of the peace.

As it may happen through neglect or otherwise, that in some place the militia may not be raised; and it is just and reasonable that all subjects should contribute equally towards the expense of raising and supporting a militia for the defence of the realm, the lieutenant, or any three deputy-lieutenants of every county, on or before the twenty-fifth day of December in every year, must transmit to the clerk of the peace, or in Scotland to the clerk of the commissioners of supply, of the county, stewartry, city, or place, an account of the names, number, and rank of the officers, and the number of non-commissioned officers, drummers, and privates, of the militia of that year, and the time during which such militia hath been trained and exercised; and each clerk of the peace shall deliver such certificate to the justices at quarter sessions, held next after the twenty-fifth day of December in every year, (or in *Scotland* to the commissioners of supply, at their general meeting, held in April yearly) on the day on which the session is opened, and be filed amongst the records of the session. Where no certificate is received by the clerk, he must certify that under his hand and seal to the justices assembled, or in Scotland under hand only, to the commissioners so assembled; and such certificate is filed amongst the records of session.†

* 42 Geo. III. c. 90, sec. 156.

† 42 Geo. III. c. 90, sec. 157; Idem, c. 91, sec. 149.

In every county (or in *Ireland*, regiment, &c.,) in which the full quota is not raised and completed within six months (or in *Ireland* three months) after the time when the same ought to be raised by ballot, or within six months (in *Ireland* four) from the order for enrolling volunteers, after the same have been fixed and established by order in council; then ten pounds shall be annually paid by the county, &c., for and in lieu of every private less than the quota, not raised within the time limited; and the justices and magistrates of every such county, assembled at general or quarter sessions, held next after the expiration of the said six months, (or in *Scotland* the commissioners of supply, at their first general meeting, held in April each year next after the expiration of the said six months,) upon the receipt of the certificate of the lieutenant, or three deputy-lieutenants, which he or they must transmit to the clerk of the peace, (or the clerk of the said commissioners in *Scotland*,) to be laid before the said justices and magistrates, (or in *Scotland* to the said commissioners,) at such sessions or meeting, rate and assess the said sum of ten pounds per man as aforesaid upon every such county; and in case the number required for the militia of any county is not provided within three calender months after the lieutenant or any one of the three deputy-lieutenants have had notice from or by the order of the Commanding Officer of such militia of any deficiency; then the justices at the next general or quarter sessions, held for the county, (or the said commissioners assembled at the first meeting for the county, &c.,) after such deficiency has been made known to them by the lieutenant or deputy, shall rate and assess ten pounds for every man deficient.*

Where the quota of any county not raised within a limited time £10 shall be paid for each man deficient.

In *Ireland* the process is by proof on oath, laid before any governor or deputy, before the judges of assize, or in Dublin before the Court of Queen's Bench; the judge of assize for that court must then fine the district in default ten pounds per militia-man deficient, and repeat the fine so long as the deficiency continues; the fines are estreated into the Exchequer and issued in process, and levied by the sheriff or other officer to whom process is directed; the Barons of Exchequer or commissioners of reducement can on no account take off the fines.†

* 42 Geo. III. c. 90, sec. 158; Idem, c. 91, sec. 150.
† 49 Geo. III. c. 120, sec. 141.

Such assessment to be made on each parish proportionally.

The justices and magistrates, or in *Scotland* the commissioners of supply, in making any such rate and assessment upon the whole county, shall apportion the sums assessed; and rate and assess upon the several parishes, in the proportions in which the men are raised by such parishes and tythings respectively, according to such apportionment as may have been made thereof in pursuance of this act, or to the last apportionment that shall have been made of men to be raised by each parish and tything.*

When deficiency in any parish assessment shall be made thereon.

When in any county such deficiency of men arise from the default of any particular parish, in not raising the proportion required; then the justices and magistrates, (or in Scotland the commissioners of supply,) in making a rate and assessment, shall rate and assess all sums of money upon such, in proportion to the number of men by which each parish falls short of the number of men required.†

Justices to transmit amount assessed to the county treasurer; overseers to pay the money out of poor rates.

In *England*, the justices and magistrates of the counties where any such rate and assessment is made, immediately after making any rate and assessment must transmit the amounts of the sums assessed to the treasurer of the county; and the treasurer, as soon as conveniently may be, causes notice to be given to the overseers of the poor of the parish upon which such rate or assessment is made; and the overseers, within fourteen days after notice, pay the amount of the rate or assessment made upon their parish, out of any money in their hands, of the poor's-rates; and if they have not sufficient money for that purpose, then the overseers are required to make a rate sufficient to satisfy the above assessment; and may levy and collect it as rates made for the relief of the poor. In *Scotland* the commissioners of supply transmit assessed fines to the collector of land-tax, who gives notice to the persons in the places assessed; and he must forthwith levy and collect the rate in the same manner as he does the cess or land-tax.‡

* 42 Geo. III. c. 90, sec. 159; Idem, c. 91, sec. 151. This section does not apply to Ireland.

† 42 Geo. III. c. 90, sec. 160; Idem, c. 91, sec. 152.

‡ 42 Geo. III. c. 90, sec. 161; Idem, c. 91, sec. 153.

The treasurer receiving, (or in *Scotland* the collector of the land tax,) levying, and collecting any such money, shall retain such money in his hands for three calender months after receipt, and during the three months any deputy-lieutenant of the subdivision, within which such parish is situate, may raise any volunteer for such militia, in lieu of such man so deficient, and may agree with every volunteer for a bounty not exceeding ten pounds; and the deputy-lieutenant before whom any volunteer shall be duly examined, approved, sworn, and enrolled, shall make an order upon the treasurer or collector as aforesaid, for payment of such bounty, and on the production to such treasurer or collector as aforesaid, of a certificate of such deputy-lieutenants, of such volunteer having been duly examined approved, sworn, and enrolled, and of such order for the payment of bounty, and of a certificate under the hands of the Commanding Officer, of such man having joined, such treasurer or collector as aforesaid is required to pay out of such money in his hands, any money not exceeding ten pounds for each volunteer; and the treasurer or collector as aforesaid, at the expiration of three months after the receipt of such money, must pay all sums of money as may have come into his hands, on account of any such fines, and not paid for and on account of any such volunteer, to the receiver-general of such county; or in Scotland to the receiver-general of Scotland.*

County treasurer to retain such money three months and pay thereout bounties to volunteers, then the balance to the receiver-general.

Whereas there are several cities, towns, and places (in England), which do not contribute to "The County Rate," and doubts may arise whether they can be legally rated, in all cases where the militia shall not be raised within any place not rated to the county rate, the proportion of ten pounds per man, to be borne by such place, must be levied within such place by a separate rate by the overseers of the poor, as the rates for the poor are levied, &c.; and the overseers of the poor must pay over the same to the treasurer of the county, to which such place is united for militia purposes.†

Where there are no county rates, assessments shall be raised as the poor's rates are, and paid by overseers to treasurer of the county.

When any town lies in two counties, the proportion of the

Where town

* 42 Geo. III. c. 90, sec. 162; Idem, c. 91, sec. 159.

† 42 Geo. III. c. 90, sec. 163.

lies in two counties, assessments paid to the treasurer of that wherein the church stands.

money to be paid for such town, in lieu of raising the militia, shall be paid to the treasurer of the county wherein the church of such town is situate.*

Assessment for a place where no county rates, not paid may be levied on the overseers.

If any sum of money which ought to be paid by any place not rated to the county rate is not paid to the treasurer of the county before the *first day of June* in every year, the justices for such place, at their next Midsummer Quarter Sessions, are required (by their warrant, directed to any constable of such parish and division,) to cause the sum due from such parish to be levied by distress on the respective overseers of the poor of every such parish and division, rendering the overplus (if any) to the owners of such goods and chattels, after such money, and the reasonable charges attending such distress and sale, shall be fully paid and satisfied; and all such overseers of the poor shall be reimbursed the money so levied on them, as overseers of the poor are reimbursed the money by them expended for the poor, and may make a rate if necessary.†

When the assessment upon any place is paid to the Receiver-General, it shall be indemified for not raising its quota.

Every receiver-general of the rates and duties under the management of the commissioners of taxes, (or collector of land-tax in Scotland,) to whom any such money shall be paid, must give a receipt to the person paying, which is a sufficient discharge; and when the whole sum directed as aforesaid is paid to the receiver-general, or in Scotland the receiver-general of Scotland, such payments shall be a full discharge and indemnification to the county for the failure in raising the militia for the year in respect whereof such payment is made; and every such receiver-general must within ten days after receipt, certify it to the Lords of the Treasury, and forthwith pay the same into the Exchequer at Westminster; and the money so paid into the Exchequer must be kept separate, and be accounted for yearly to Parliament, and disposed of as Parliament directs.

The treasury may allow Receiver-General a reward for his trouble.

The Lords Commissioners of the Treasury, or any three or more of them, are authorized to allow the receiver-general on the clearing his accounts, such salary as they think proper, not

* 42 Geo. III. c. 90, sec. 164; Idem, c 91, sec. 150.

† 42 Geo. III. c. 90, sec. 165.

exceeding two pence in the pound for the money so paid into the Exchequer.* In Scotland, no fee or gratuity is allowed.

The only clause occurring in the Irish act with respect to the disposal, &c., of these fines, is one directing them to be paid into the Treasury, and accounted for to Parliament, *no* fee being given to any officer of the Exchequer, for or on account of receiving or issuing such money; the fines may also be applied under the order of Lord-Lieutenant in providing substitutes.†

County treasurer may detain 1d. per pound of the money, and make a like allowance to high-constables.

The treasurer of every county, or the collector of land-tax in Scotland, in which such money is raised, is allowed one penny in the pound, upon the whole sum by him received and paid; which allowance he is authorized to detain in his hands out of the money received by him, before payment to the receiver-general. In England, every high constable, petty constable, churchwarden, and overseer, acting in collecting the said money, is allowed by the treasurer one penny in the pound, and the treasurer is required to deduct the same out of the money so received by him, and to pay the respective proportions thereof to such officers.‡

Clerks of the peace transmit annually copies of certificates received from the County-Lieutenants and certify omissions.

The clerk of the peace (in Scotland the clerk of supply) for every county, is required, within fourteen days next after the general quarter session of the peace, (in Scotland, the first of the commissioners of supply), held next after the *twenty-fifth day of December*, *yearly* to transmit to the Lords of the Treasury, (in Scotland to the Lord Chief Baron and other Barons of the Exchequer) and to the receiver-general for such county, (or in Scotland to the collector of the land-tax), a copy, signed, of every certificate received from the Lieutenant, or any three Deputy-Lieutenants of such county; and where such certificate is omitted, the clerk must certify the omission to the treasury, and that the clerk of the peace has certified the same to the justices, at the general quarter session, and required the justices to proceed according to the directions of the act; and also must certify what proceedings have been had at the general quarter sessions, in

* 42 Geo. III. c. 90, sec. 166; Idem, c. 91, sec. 161.
† 49 Geo. III. c. 120, sec. 142.
‡ 42 Geo. III. c. 90, sec. 167; Idem. c. 91, sec. 161.

relation to the assessing and raising money, where the militia has not been raised; and in case such justices omit, neglect, or refuse to raise the said money according to the act, then the clerk of the peace of the county is required, within fourteen days next after such general quarter session of the peace, to certify to the solicitor of the treasury, such omission, neglect, or refusal of such justices, and the justices present at such session, and the solicitor of the treasury is required, on receipt of such certificate, forthwith, by all legal means, to compel such justices to pay due obedience to the act.*

If 10l. per man be not raised and paid into the Exchequer, the Solicitor of the Treasury, &c., to compel its being done.

If the said ten pounds per man, to be raised and paid in any such county, be not levied, collected, and paid into the exchequer, the solicitor of the treasury, (or in Scotland the Queen's attorney in exchequer), is required forthwith, upon knowledge thereof, to proceed, by all legal means, to compel the levying and collecting of money, and payment into the exchequer.†

Penalty for neglect of duty in clerks, &c.

If any clerk of the peace, (or in Scotland of supply), refuse or wilfully neglect to receive, deliver, file, make, record, or transmit any such certificates as aforesaid; every clerk so offending, for every offence forfeits one hundred pounds, and also his office, and is rendered incapable of holding any office of trust, civil or military, under the Crown; and if any receiver-general, treasurer, (or in Scotland collector of land-tax,) chief constable, petty constable, or other officer who ought to act and assist in the raising and collecting of the said money, shall wilfully omit, neglect, or refuse to act, every such receiver-general or treasurer, (or collector of land-tax in Scotland,) so offending, for every offence forfeits two hundred pounds; and every chief constable fifty pounds; and every petty constable and other officer twenty pounds; and the solicitor of the treasury, (or in Scotland the Queen's advocate, on the case being laid before him by the Queen's attorney in exchequer, who is required so to do), is required, with all due diligence, to prosecute all officers who omit, neglect, or refuse to perform

* 42 Geo. III. c. 90, sec. 168.

† 42 Geo. III. c. 90, sec. 169; Idem. c. 91, sec. 164.

the duty touching the raising, collecting, and paying of the said money; and in case the solicitor of the treasury, (or in Scotland the Queen's attorney in exchecquer,) shall wilfully omit or delay to proceed, he, for every offence, forfeits five hundred pounds.*

Provisions of 24 Geo. II, c. 44, to extend to County-Lieutenants and deputies.

And be it further enacted, that the provisions of an act passed in the twenty-fourth year of the reign of His late Majesty King George the Second, intituled, *An Act for the rendering justices of the peace more safe in the execution of their office, and for indemnifying constables and others acting in obedience to their warrants*, shall extend to all His Majesty's lieutenants, and to all deputy-lieutenants, acting in the execution of this act, in like manner and as fully and effectually as the same extend to justices of the peace acting in the execution of their office.†

Commissions in Militia not to vacate seats in Parliament; officers not liable to serve as sheriffs.

The acceptance of a commission in the militia shall not vacate the seat in Parliament; and in England, no officer of the militia in actual service in the militia before the end of the war in 1815, can be compelled to serve the office of sheriff.‡

Voters going to elections of members not punishable for absence.

No officer, non-commissioned officer, drummer, or private, of the militia, is liable to penalty or punishment for absence during the time he is going to vote at any election of a member to serve in Parliament, or during the time returning. In Ireland, it seems, leave must be asked, but, at the same time, must be granted as a matter of course.§

* 42 Geo. III. c. 90, sec. 170; Idem. c. 91, sec. 164.

† 42 Geo. III. c. 90, sec. 171; Idem, c. 91, sec. 166. By the 11 & 12 Vict. c. 44, s. 17, so much of the 24 Geo. II. c. 41, intituled *An act for the rendering justices of the peace more safe in the execution of their office, and for indemnifying constables and others acting in obedience to their warrants*, as relates to actions against justices of the peace, is repealed; and it will become a question, therefore, whether its provisions can be said to be kept alive for the purposes of the present act.

‡ 42 Geo. III. c. 90, sec. 172; Idem. c. 91, sec. 167; 49 Geo. III. c. 120, sec. 34; 2 and 3 Vic. c. 59. Also, if an officer of the militia is sheriff when the militia is embodied, the under-sheriff is answerable for the office.

§ 42 Geo. III. c. 90, sec. 173; Idem. c. 91, sec. 168; 49 Geo. III. c. 120, sec. 60.

Non-commissioned officers, drummers, and men, not liable to serve as peace officers.

No serjeant, corporal, drummer of the militia, or private, from the time of his enrolment until discharged, can be compelled to serve as a peace or parish officer, or to perform any highway statute work.*

Married Militia-men may set up in any place in Great Britain, as soldiers may, under 24 Geo. III. c. 44.

Every person having served in the militia when in actual service, being a married man, may set up and exercise any trade in any town or place within Great Britain, without any let, suit, or molestation of or from any person or persons whomsoever, as freely (with the like exception in respect to the two universities) as any mariner or soldier can or may do by virtue of an act, passed in the 24th year of His present Majesty's reign, intituled *An Act to enable such Officers, Mariners, and Soldiers, as have been in the Land or Sea Service, or in the Marines, or in the Militia, or any Corps of Fencible Men, since the Second Year of His present Majesty's Reign, to exercise Trades;* and no such militiaman shall be liable to be removed out of any such town or place, until he is become chargeable to the parish; and, in Ireland, he may exercise such trades as freely, and with the same provision, and under the same regulations, as any inhabitant of such places.†

How penalties recovered and applied.

Fines, penalties, and forfeitures, by act imposed, which exceed twenty pounds, shall be recovered by action of debt, bill, plaint, or information, in any of Her Majesty's Courts of Record at Westminster, or the Courts of Great Session in the principality of Wales,‡ or the Courts of the Counties Palatine of Chester, Lancaster, and Durham, (as the rate shall require), or in Scotland in the Court of Exchequer there; and in *Ireland* the Superior Courts of Record in Dublin; and that all fines, penalties, and forfeitures, not exceeding twenty pounds, on proof upon oath of the offence before any justice§ (in Scotland two or more) of the county, be levied by distress on the offender's goods, by warrant

* 42 Geo. III. c. 90, sec. 174; Idem. c. 91, sec. 169; 49 Geo. III. c. 120, sec. 61.

† 42 Geo. III. c. 90, sec. 175; Idem. c. 91, sec. 170.

‡ These Courts are now abolished.

§ 42 Geo. III. c. 90, sec. 176; Idem. c. 91, sec. 172; 49 Geo. III. c. 120, sec. 143.

under the hand (and seal in England,) of such justice or justices, rendering the overplus (if any) on demand, after deducting the charges of such distress; and for want of sufficient distress such justice is required, in all cases were no particular time of commitment is hereinbefore directed, to commit the offender to the common gaol of the county, for any time not exceeding three months; and the money arising by fines, penalties, and forfeitures, not otherwise particularly applied by this act, to be paid to the clerk, (in *Ireland* to the collectors of excise, and accounted for and paid over by them as all other monies received by them respectively) or (where there are no clerks) to the commanding officers of the respective bodies of the militia, of the respective counties where such offences are respectively committed, and be part of the public stock of such bodies respectively.*

No order to be removed or superseded by *certiorari*.

No order of conviction made by any lieutenant of any county, or by any two or more deputy-lieutenants, or by any one deputy-lieutenant together with any one justice, or by any justice or justices, by virtue of this act, shall be removed by *certiorari*, or bill of advocation, (or in Scotland by bill of advocation to the court of session), and no writ of *certiorari*, or bill of advocation, shall supersede execution or other proceedings.

Limitation of Actions.

Any action brought against any person for anything done in pursuance of the Militia Act, shall be commenced *within six months next* after the fact committed, and be laid in the county where the cause of complaint did arise, and not elsewhere, (except in Scotland, and then not unless before the Court of Exchequer, in cases allowed by 42 George III. cap. 91,) and the defendant in every such action may plead the general issue, and give this act and the special matter in evidence; if the jury find for the defendant, or if the plaintiff be nonsuit or discontinue, and the

General issue.

* 42 Geo. III. c. 90, sec. 177; Idem. c. 91, sec. 173; 49 Geo. III. c. 120, sec. 146. In *Ireland*, it is also provided that all fines *when levied* shall be paid into the treasury, and accounted for to Parliament, and that they may be applied under order of the Lord Lieutenant, for providing substitutes; 49 Geo. III. c. 120, sec. 152.

Treble Costs.

defendant have appeared, or if upon demurrer, judgment be given against the plaintiff, the defendant shall have treble costs, and the like remedy as any defendant hath in other cases to recover costs by law.*

The following provisions are the creation of the late Militia Acts.

Place for militia storehouse to be provided.

If any place for keeping therein the arms and *matériel* belonging to any corps of militia not embodied, is unfit for the safe custody of such arms, &c.; or if the public service requires the site to be changed; or in case no place has been provided, the justices for such county, at their general or quarter sessions next ensuing, upon representation of the Lord-Lieutenant, and of the commandant of such corps, (in *Scotland*, the commissioners of supply at their first general meeting held after a representation,) that no such place has been provided, or that it is unfit, being duly satisfied thereof, they are required to provide a suitable place, and may from time to time resolve either to purchase or hire any suitable premises, and if necessary to enlarge, alter, or improve the same, or any premises already purchased or hired; or to purchase or take on lease for not less than sixty years, any land for the purpose of building, and to build or rebuild thereupon; and, with reference to any such purchase, the clauses "Lands' Clauses Consolidation Act, 1845," (in Scotland, the "Lands' Clauses Consolidation Act—Scotland—1845,") with respect to the purchase of lands by agreement, incorporated with this act; and the words "promoters of the undertaking"

* 42 Geo. III. c. 90, sec. 178; Idem. c. 91, sec. 174; 49 Geo. III. c. 120. sec. 147.

in those clauses, shall mean the persons by the Acts authorized to purchase land; and the word "undertaking," the building or rebuilding, enlarging, or altering of a place for militia stores; the place to be so hired, &c., must contain an orderly and guard-room, and magazine, and a sufficient yard or place wherein the men may be mustered for the issue and return of such arms and stores; such justices or commissioners of supply may add to such buildings quarters for the permanent staff, and cells, together with other conveniences suitable for the custody and accommodation of the stores; and no place for keeping militia stores, nor any premises appurtenant thereto, is liable to be assessed to any rates or assessments whatsoever; and all or any person or persons by the Lands' Clauses Consolidation Act, 1845,* and these acts authorized to sell, may grant leases instead of selling, and for such term of years as may be agreed on, and under such terms and provisions in all respects as may be agreed on, and either at rackrent or otherwise; and any fine or premium paid on the granting any such lease, shall be paid and applied under the provisions of the Lands' Clauses Consolidation Act, 1845, as if the same had arisen from a sale made by the party making the lease; and the party taking any lease for the purposes of this act shall be indemnified against the rent and the performance of the covenants in such lease, by and out of the county rates; and the same shall be raised and paid out of the county rates, in the manner after provided for the raising and payment of interest on monies borrowed on mortgage.†

Storehouse to be exempt from local rates.

Whenever any place for keeping the stores of the militia becomes insecure, &c., or in case the public service requires the site to be changed, and the justices for the county at general or quarter sessions have so determined, the persons in whom such place may be vested, upon service upon them of an order made at any court of quarter sessions of the peace, setting forth that another and more convenient and proper place has been provided, whereby the place theretofore provided has become useless, shall proceed forthwith, in such manner as they shall think best, to sell

Sale of place which is not required.

* The remainder of this clause applies only to England.

† 17 & 18 Vic. c. 105, sec. 2; Idem, c. 106, sec. 36.

and convey the same to any purchaser thereof, freed and discharged from the uses or trusts to which it had theretofore been subject, and shall give receipts and acquittances for the purchase money thereof, and shall pay over such money, after deducting thereout all costs and charges attending such sale, unto the treasurer of such county, to be by him applied and paid towards the cost of purchasing any ground for the purpose of building, or of purchasing, building, rebuilding, enlarging, altering, improving, or fitting up any place, buildings, or premises, for the purposes aforesaid, under the powers of this act; and the residue of such purchase money (if any) shall be invested in the public funds, and the interest thereof applied in aid of the rate of such county, according as the justices may direct; provided that no person purchasing any place so sold, shall be bound to inquire into any circumstances relating to the sale thereof, nor be bound to see to the application nor be answerable for the non-application or misapplication of the purchase monies; and when and as soon as the persons in whom such place shall have been so vested, shall have paid to the said county treasurer the clear proceeds arising from such sale, and shall have procured from such treasurer his receipt for the same, then and from thenceforth such persons shall be forthwith discharged from all liability, claim, or demand in respect of the said place, and of the proceeds arising from the sale thereof.*

Expense of storehouse, how to be provided for.

The sums required for the hire, purchase, enlargement, alteration, building of, or addition to any such place, in case the same shall be approved by the said Lord-Lieutenant and colonel or commandant, shall, together with the sums required for the cost of fuel and other necessary expenses incidental to the use and maintenance of the premises, be paid by the treasurer of such county out of any monies in his hands arising from county rates; or if such treasurer shall at any time not have sufficient monies in his hands, the justices of such county, in their general or quarter sessions assembled, are hereby authorized and required, as soon as may be after receiving notice that such monies are or will be required, forthwith to cause the same to be raised by such

* This section applies only to England; 17 & 18 Vic. c. 105, sec. 3.

additional county rate as shall in their judgment be sufficient; and the monies so raised, according to the laws in force for the time being, relating to county rates, shall be applied accordingly. In Ireland the money is raised by the presentment of the grand jury of such county and county of a city, and in the city of *Dublin* by the town council of the borough of *Dublin*, under the provisions of an act of the twelfth and thirteenth of Her present Majesty, chapter ninety-seven; which presentment the grand jury of the county or town council respectively shall pass, on a certificate of the sum required, signed by the chief secretary of the Lord-Lieutenant, or in the absence of such chief secretary, by the under secretary, or by the assistant under secretary, without any application at presentment sessions; and the certificate shall be transmitted by such chief or under secretary, or assistant under secretary to the clerk of the crown for such county, at any time prior to the first day of assizes for such county; or if in the county, or county of the city of *Dublin*, then prior to the first day of the presenting term.*

Power to borrow on mortgage of the county rates.

In order to distribute over a term of years the expenses of purchasing, &c., such place, directed to be paid out of the county rate, the justices of such county in their general or quarter sessions, (in *Ireland* the grand jury at the assizes, or in *Dublin* the town council,) may, if they think fit, borrow all or any part of the money necessary for the aforesaid purposes, upon mortgage of the rates of such county; and every such mortgage may be in the form in the schedule (A.) to this act annexed, or to the like effect, and shall be executed by the chairman and any two of the justices present at the general or quarter sessions at the time being; (or in *Ireland* the foreman of the grand jury present at the assizes, or in *Dublin* the Lord Mayor and any two of the town council,) and shall be effectual for securing to the person advancing the sum in such mortgage expressed, his executors, administrators, and assigns, the repayment thereof, with interest after the rate, at the times, and in the manner in such mortgage specified; and any person entitled to any such mortgage may transfer his right and interest therein to any other person, such

* 17 & 18 Vic. c. 105, sec. 4; Idem, c. 106, sec. 38; Idem, c. 107, sec. 38.

transfer being made according to the form in schedule (B.) to this act annexed, or to the like effect; and the persons to whom such mortgages or the transfers thereof are made, their executors and administrators, shall be creditors upon the rates and funds thereby expressed to be charged, in an equal degree one with another, according to the respective sums in such mortgages mentioned to be advanced by them.*

Justices to provide for Interest on Mortgages and repayment of Principal.

The said justices, in general or quarter sessions assembled, (or in Ireland the said grand jury or town council,) must in every year, provide out of the county rate, in the manner and at the times in such mortgages specified, the monies required to pay the interest on the sums borrowed and then unpaid; and also appropriate a further sum, not less than one-thirtieth of the principal sum originally borrowed, and apply the same in repayment of the said principal sums then unpaid, year by year, until the whole of such principal sums are repaid; and must, by agreement with the parties entitled to such mortgages, or in default of agreement by such other means as they deem most equitable and convenient, determine the order of priority in which the several sums advanced shall be repaid.†

Power to re-borrow.

The justices, or in Ireland the grand jury or town council, with the consent of the parties entitled to such mortgages, may pay off from time to time any monies so borrowed, and re-borrow from time to time the sums necessary for that purpose, but so that all monies borrowed be repaid within thirty years from the time of first borrowing the same.‡

Mortgages under former acts saved.

All mortgages made under the powers of the first recited act shall be and remain as valid and effectual, and the persons entitled to the same shall continue to have the same rights and remedies in respect thereof, as they would have had if this act had not been passed.§

* 17 & 18 Vic. c. 105, sec. 5; Idem, c. 106, sec. 39; Idem, c. 107, sec. 39.
† 17 & 18 Vic. c. 105, sec. 6; Idem, c. 106, sec. 40.
‡ 17 & 18 Vic. c. 105, sec. 7; Idem, c. 106, sec. 41.
§ 17 & 18 Vic. c. 105, sec. 8.

All acts done by the deputy with reference to providing of a place for militia stores, are valid; and all contracts, covenants, and leases made by them for the said purposes, under the powers of the said acts, are by 17 and 18 Vic. c. 105, confirmed; the justices of such county are deemed to be substituted for the deputies as the contracting parties thereto; and such contracts, covenants, and leases shall be respectively construed and put in force as if the same had originally been made and entered into by and with such justices; in the case of any lease subsisting at the passing of the said act the justices assembled as aforesaid may, with the consent of the lessors or their representatives, and upon terms mutually agreed upon, determine such lease, &c.*

Acts done and contracts made by Deputy-Lieutenants shall be valid.

Powers given by this act 17 and 18 Vic. c. 105, to extend to militia of the City of London.†

A proportionate part of the expense incurred by the counties subsequently to the 15 and 16 Vic. c. 50, in providing, building, enlarging, or altering places for militia stores, and incident to the use and maintenance of the premises, is paid and borne in manner hereinafter provided, by all boroughs incorporated under the act of the sixth year of King *William* the Fourth, c. 76, &c., and which are not liable to county rates.‡

Municipal boroughs exempt from County Rate to contribute in due proportion.

In order to determine the proportion to be contributed by any such borough, the justices of every such county are required at some general or quarter session held by them within six calendar months after the passing of the act, and the council of every such borough at some meeting of the council held within three months after, &c., to appoint respectively two justices of such county and two members of such council, as soon as conveniently after their appointment, to meet together and jointly determine and award the respective proportions in which the county and borough should contribute, according to the respective annual values of the property as rated to the relief of the poor within such borough, and

Mode of assessing the proportions payable by the boroughs.

* 17 & 18 Vic. c. 105, sec. 9.
† Idem, sec. 10.
‡ Idem, sec. 11.

of the property as rated to the relief of the poor and chargeable to the county rate within such county.*

Manner in which the award is to be made.

The said four persons certify the sum so found by them to be contributable by such county and borough respectively, by an award in duplicate under their hands and seals, and transmit one copy of such award to the clerk of the peace for the county, and the other copy to the town clerk of the borough, who keep the same in their custody, and allow all persons contributing to the county rates or borough rates (as the case may be) to inspect and take copies of or extracts from the same, at all seasonable hours, without fee or reward; and such award, until revoked as hereinafter provided, is final and conclusive.†

Arbitrator to be appointed, in default of agreement.

In case the four persons, or any of them be not appointed, or shall be unable to agree together as such contribution, or neglect to meet, or fail to make any award within three months from the time of the appointment of the two persons last appointed, one of Her Majesty's principal secretaries of state may, upon the memorial of the justices of such county at their general or quarter sessions assembled, appoint one competent person to act as arbitrator between such county and borough respectively, empowered to determine, upon the basis of the annual value as aforesaid, the proportion which such borough ought to contribute; and he must make his award upon the matter so determined under his hand and seal in duplicate, and must transmit the several copies thereof to the clerk of the peace and town clerk, who shall perform the same duties as before provided in respect thereof; and any such award, until revoked as hereinafter mentioned, shall be final and conclusive.‡

Vacancies in arbitrators to be supplied.

In case of the death or inability to act of any of such four persons, or of such arbitrator, as the case may be, the vacancy shall be supplied by the justices, or the council, or the secretary of state by whom the person so dying or unable to act was appointed, within three months after such vacancy has occurred, and so from time to time.§

* 17 & 18 Vic. c. 105, sec. 12.
† Idem, sec. 13.
‡ Idem, sec. 14.
§ Idem, sec. 15.

All persons appointed for determining the respective proportions may, without fee or reward, inspect or take copies or extracts of and from all county or borough rates, or rates made for the relief of the poor in any place whereto their inquiry extends, and which they may think necessary to be examined; and any person having the care or custody of any such rate who refuses to permit such inspection, is liable to a penalty not exceeding ten pounds.* **Power to inspect rates.** **Penalty.**

The sum determined, in accordance with such award as aforesaid, must be paid from time to time by the treasurer of such borough to the treasurer of the county, upon a warrant under the hands and seals of any two of the justices present at the general or quarter sessions of the county; and such payment, for which a receipt must be given, shall be made out of the borough rate or borough fund of such borough, or in case the monies arising from such rate or fund then in the hands of such treasurer is not sufficient, the council of such borough shall forthwith cause the further sums required to be raised by means of a borough rate.† **The borough treasurer to pay the sums awarded to the county treasurer.**

The council may borrow any sum not exceeding the proportion payable by them, and mortgage, with the consent of three or more commissioners of Her Majesty's treasurer, any part of the lands, tenements, and hereditaments of such borough; and repay the money so borrowed, and interest thereof, according to the terms of such mortgages, out of the borough fund or borough rate, and from time to time to re-borrow, for the purpose of paying off any sums so borrowed; provided that the whole sum borrowed, with the interest thereon, must be repaid within thirty years.‡ **Borough may borrow money on mortgage.**

Such mortgages shall be made in the form in schedule (A.) *mutatis mutandis*, or to the like effect; and any person entitled to any such mortgage may transfer his right and interest therein to any other person, such transfer being made according to the form in schedule (B.) *mutatis mutandis*, or to the like effect.§ **How mortgages are to be made.**

* 17 & 18 Vic. c. 105, sec. 16.
† Idem, sec. 17.
‡ Idem, sec. 18.
§ Idem, sec. 19.

Conveyances and other instruments exempted from stamp duty.

All conveyances, leases, mortgages, awards, contracts, receipts, and other instruments made for the purpose of carrying into effect these provisions exempt from stamp duty.*

Stannaries charged to be apportioned.†

Award may be revoked in certain events.

At any time, not less than three years after any award, one of Her Majesty's principal secretaries of state, may upon the memorial of the justices &c., or of the mayor, aldermen, and burgesses of any borough, at a special meeting of their council agreed to, if he shall be satisfied that adequate reasons exist for a re-adjustment of the proportions, declare by writing under his hand that such award be revoked and that a new award be made in the premises, and thereupon the same proceedings shall be as are directed with respect to such matters respectively in the first instance.

Three parts of the county of Lincoln, how to be dealt with, under 17 and 18 Vict. c. 105, sec. 23.‡

Penalties for fraudulent re-enlistment.

Any militia volunteer who, before the expiration of his engagement, enrols or offers to enrol himself in any other regiment, battalion, or corps of militia, or in the same, whether by the same or by different names, (save in the way of lawful renewal of his engagement,) upon conviction thereof before any one justice forfeits any sum not exceeding ten pounds, and in default of payment, is to be imprisoned, with or without hard labour, for any time not exceeding three months, and is also liable to the deduction out of the bounty which he might otherwise have received in respect of his original enlistment, of a sum equal to what he may have received upon his fraudulent re-enlistment, and of such further sum as the colonel or commanding officer of the regiment, battalion, or corps in which he may have originally enlisted thinks proper, or as the secretary-at-war from time to

* 17 & 18 Vic. c. 105, sec. 20; Idem, c. 106, sec. 51.

† Idem, c. 105, sec. 21.

‡ Secs. 23 to 30 inclusive of the militia act (England), No. 2; 17 and 18 Vic. c. 105, are local provisions relating to Lincolnshire and Ely.

time directs, not exceeding the expenses of his attestation and enrolment, on such fraudulent re-enlistment.*

The justice before whom a militia volunteer shall be convicted of having enroled or or offered to enroll himself in another corps of militia or more than once in the same corps, shall send or cause to be sent to the secretary-at-war a report of such conviction, stating the name of such volunteer, the regiment, battalion, or corps of militia to which he belongs, the offence of which he has been convicted, and the sentence or decision of the justice thereon, and where such volunteer is imprisoned, the period when the imprisonment will expire; and for such report as aforesaid the clerk of the said justice shall be entitled to a fee of two shillings, and the secretary-at-war may transmit to the justice so convicting an order for the payment to any person who has apprehended and procured the conviction of such offender, of such sum not exceeding twenty shillings, as he shall think fit.† The justice before whom a militiaman is convicted of re-enlistment in the militia to send report of conviction to Secretary-at-War.

The secretary-at-war may at any time discharge any militia volunteer for misconduct, unfitness, or other cause, upon such conditions as he may from time to time direct; and such volunteer has no claim to future pay or bounty; or may release from future attendance in the militia any volunteer who fraudulently enlisted into the regular forces, or the forces of the *East India* Company, or fraudulently entered into the navy, and who has been sentenced to imprisonment, or to forfeiture for a period not exceeding eighteen calendar months, of one penny a day from his pay in such forces or navy; and any man so released must serve with the force which he may have enlisted into or entered in the United Kingdom or elsewhere, with the like liabilites in all respects as any soldier or seaman in such respective force, and his place in the militia shall be supplied in like manner as if his term of service as a militiaman had expired by efflux of time.‡ Power to discharge men from the militia who have enlisted in the regular forces.

* 17 and 18 Vic. c. 105, sec. 40; Idem, c. 106, sec. 59; Idem, c. 107, sec. 23.

† 17 and 18 Vic. c. 105, sec. 41; Idem. c. 106, sec. 60; Idem, c. 107, sec. 24.

‡ 17 and 18 Vic. c. 105, sec. 42; Idem, c. 106, sec. 61; Idem, c. 107, sec. 25.

Provision for withholding payment of Bounty from men wrongfully absent from training.

Any bounty which, under the militia regulations, may be payable during or in respect of attendance at training and exercise, is forfeited by any man who wholly absents himself from such training and exercise without leave lawfully granted, or sickness, certified according to such regulations; and any such bounty which would otherwise be payable to any man who partially absents himself as aforesaid without such leave, or sickness, certified as aforesaid, or who misconducts himself during the training, shall be wholly withheld, or issued only in such manner and in such portions as the secretary-at-war, upon the report of the commanding officer, shall determine.*

Enrolment in militia not to cause forfeiture of any interest in any benefit society.

No man, by reason of his enrolment or service in the militia, or in the naval coast volunteers, loses or forfeits any interest he possesses in any friendly or benefit society, any laws, rules, or regulations of such society to the contrary notwithstanding; and in case any dispute shall arise between any such society and any such man, by reason of such enrolment or service, it shall be considered as being a dispute directed by the rules of such society to be decided by justices of the peace, pursuant to the provisions of the acts in force relating to friendly societies.†

Provision for apprehension of militiamen not attending or absenting themselves during training.

The commanding officer of any corps of militia shall notify to the secretary-at-war, and to the constables, tythingmen, headboroughs, or other officers of the parishes, tythings, and places in which militiamen reside who have not attended training and exercise, or who may have absented themselves during the time of training and exercise of their respective corps, the names and descriptions of all such militiamen who have absented themselves; and it is lawful for any constable, tythingman, headborough, or officer, or for any officer or soldier in Her Majesty's service or in the militia, to apprehend or cause any such militiaman to be apprehended, and to bring him or cause him to be brought before any justice of the peace, at any time within the period of his engagement in the militia, to be dealt with as in the militia acts

* 17 and 18 Vic. c. 105, sec. 43; Idem, c. 106, sec. 42; Idem, c. 107, sec. 26.

† 17 and 18 Vic. c. 105, sec. 44; Idem, c. 106, sec. 50; Idem, c. 107, sec. 27.

mentioned, or to be committed to safe custody until an escort can be sent for him, if such regiment, battalion, or corps be then out for training and exercise; and such justice shall transmit a report, in the form prescribed,* to the secretary-at-war, and the secretary-at-war shall transmit to such justice an order for the payment, to the person or persons by whom such militiaman was apprehended and secured, of such sum not exceeding twenty shillings, as the secretary-at-war may think fit.†

Penalty for inducing militiamen to absent themselves, or harbouring or employing militiamen absenting themselves.

Any person, who by words or other means, persuading any militiaman improperly to absent himself from his duty, and every person who, assisting or procuring any such volunteer improperly to absent himself, or shall conceal, employ or continue to employ any such volunteer, knowing him to be so improperly absent, for every such offence forfeits a sum not exceeding twenty pounds.

Recovery of penalties.

All offences for which any pecuniary penalty or forfeiture is imposed shall and may be heard and determined by any justice in or near to the place where the offence is committed, or where the offender may at any time happen to be; and all such penalties and forfeitures, and also the reasonable costs attending the prosecution, to be duly ascertained and awarded by such justice, shall and may be enforced and recovered in the same manner as any pecuniary penalties may be recovered in *England* or *Wales*, under the provisions of an act passed in the twelfth year of Her Majesty, intituled "*An act to facilitate the performance of the duties of justices of the peace, out of sessions, within England and Wales, with respect to summary convictions and orders.*" ‡

11 & 12 Vic. c. 43.

Application of certain penalties.

One half or moiety of every pecuniary penalty or forfeiture for buying, taking in exchange, concealing, or otherwise receiving, contrary to law, any militia arms, clothes, accoutrements, or regimental necessaries, or any public stores or ammunition for the service of the militia, and every pecuniary penalty or forfeiture for assisting, procuring, or persuading any militia volunteer

* For Forms see *post.* p. 361.

† 17 and 18 Vic. c. 105, sec. 46; Idem, c. 106, sec. 65; Idem, c. 107, sec. 29. This seems to repeal secs. 50, 51, 52 of 49 Geo. III. c. 120. In *Ireland* the escort has a right to be billetted; Idem, secc. 53.

‡ 17 and 18 Vic. c. 105, sec. 49; Idem, c. 107 sec 32.

improperly to absent himself from duty; or concealing, employing, or continuing to employ any such volunteer, knowing him to be so improperly absent, shall go to the informer; and the other moiety, or where the offence shall be proved by the person who shall inform, then the whole of the penalty, shall be paid over and applied in such manner as the secretary-at-war shall direct, anything in any other act to the contrary notwithstanding; and every justice who shall adjudge any such penalty or forfeiture, within four days at the furthest, must report the same and his adjudication thereof to the secretary-at-war.*

Application of penalties on militiamen.

All penalties imposed upon militiamen, (except the deductions from bounty, which shall be brought to public credit,) shall be paid to the commanding officers of the respective regiments, battalions, or other bodies of militia of the respective counties to which the militiaman belongs, and shall be made and accounted for as part of the public stock of such regiment, battalion, or other body of militia respectively.†

All things contained in 17 and 18 Vic. c. 105, sec. 54 extend to the stannaries of *Cornwall* and *Devon*, to the Lord Warden and to the Deputy Wardens of the stannaries, and to the corps of miners of *Cornwall* and *Devon*.

Secretary of State to have power to move regiments not embodied, into any quarters in the united kingdom.

The secretary of state has power to move any regiment of militia not embodied, into any quarters in any part of the United Kingdom during the period of their training.‡

Persons qualified to act as surgeons in the army to be held to be qualified for the militia.

All persons possessing diplomas, certificates, or qualifications held to qualify such persons to act as surgeons or assistant surgeons in the army, shall be held to be duly qualified to serve as surgeons or assistant surgeons in the militia.§

* 17 and 18 Vic. c. 105, sec. 50; Idem, c. 106, sec. 73; Idem, c. 107, sec. 33.

† 17 and 18 Vic. c. 105, sec. 51; Idem, c. 106, sec. 74; Idem, c. 107, sec. 34. This only includes the penalties imposed by these acts.

‡ Idem, sec. 55.

§ Idem, sec. 56.

Schedule (A*).

Take notice, that you are hereby required, within two days from the date hereof, to prepare and produce a list in writing, to the best of your belief, of the Christian name and surname of each and every man resident in your dwelling-house, between the ages of eighteen and forty-five, distinguishing in such list the several particulars mentioned in the columns thereof; and you are to sign such list with your own name, and to deliver, or cause the same to be delivered to me.

Dated the day of

A. B., Constable.

Names.	Description.	Age.	Whether any Child, and if any, whether any under 14.	Exempt or not exempt from Militia.	Grounds of Exemption.	Effective Volunteer or Yeoman.	Licensed Teacher not carrying on Trade, or Medical Practitioner actually practising.
A. B.	Housekeeper.	40	Child under 14.	Exempt.	Clergyman.	....	....
C. D.	Servant.	28	None.	Not.	....	....	....
E. F.	Lodger.	24	None.	Not.	....	Volunteer.	....
G. H.	Inmate.	30	None.	Not.	....	Yeomanry Corps.	....

N.B.—If any house is divided into distinct stories, or apartments occupied distinctly, each distinct occupier is required to make this return.

Neglect of compliance with this notice will subject the party to a penalty of ten pounds.

Take notice, that the day of , at the hour of in the noon, is appointed for hearing appeals within this sub-division, by persons claiming to be exempt from serving in the

A. B., Constable of

*The following four schedules are provided for by the 51 Geo. III., c. 118, in lieu of four somewhat similar schedules annexed to the 42 Geo. III. c. 90.

Schedule (B.)

Return to be made by the Constable to the Clerk of the Sub-division Meeting.

Names.	Description.	Age.	If any Child, and if any, whether any under 14.	Exempt or not exempt from Militia.	Grounds of Exemption.	Effective Volunteer or Yeoman.	Licensed Teacher not carrying on Trade, or Medical Practitioner actually practising.
A. B.	Housekeeper.	40	Child under 14.	Exempt.	Officer of Marines.	....	....
C. D.	Servant.	28	None.	Not Exempt.	....	Effective Volunteer.	....
E. F.	Lodger.	24	3 Children, not under 14.	Not Exempt.	....	....	Practising Apothecary.
G. H.	Inmate.	19	None.	Exempt.	Apprentice.	....	....
I. K.	Housekeeper.	41	....	....	....	....	....
L. M.	Housekeeper.	34	....	....	....	....	....

SCHEDULE (C.)

Return to be made by Clerk of Sub-division Meeting to Clerk of General Meeting.

Parish.	Description of Persons liable to serve.				Total liable to serve.	Persons exempt from serving.				Total exempt.
	Having no Children.		Having Children.			Yeomanry and Volunteers.	Army, Marines, Sea-Fencibles.	Clergy, Licensed Teachers, Medical Men, & Constables.	Infirm.	
	Under 30.	Above 30.	No Child under 14.	Any Child under 14.						
A.	130	150	120	135	535	82	10	4	8	104
B.	210	200	214	225	849	100	20	10	12	142
C.										
General Total										

SCHEDULE (D.)

Return to be made by Clerk of General Meetings to the Privy Council.

Sub-division.	Description of Persons liable to serve.				Totals liable to serve.	Persons exempt from serving.				Total exempt.
	Having no Children.		Having Children.			Yeomanry and Volunteers.	Army, Marines, Sea-Fencibles.	Clergy, Licensed Teachers, Medical Men, & Constables.	Infirm.	
	Under 30	Above 30.	No Child under 14.	Any Child under 14.						
A.	500	340	420	400	1660	300	50	20	30	400
B.										
C.										
General Total										

SCHEDULE (E.)

Return of Enrolment, dated the day of Sub-division of , in the County of

Parishes.	Names of Men.			Date of Enrolment.	Ages.	Classes.				
	Principals.	Substitutes.	Volunteers.			1st.	2nd.	3rd.	4th.	Last.
Islington.	Samuel Jones.	...	...	April 21.	30	—				
C.	Thomas Smith.	Edward Jones.	...	„ 22.	...	...	—			
D.	...	...	Thomas Gray.	„ 23.	...	...	...	...	—	
...	...	...	...	...	...	...	...	—		
...	...	...	...	...	...	...	...	...	...	—
Total serving . .										

Signed, *A. B.*, Clerk to Sub-division Meeting.

SCHEDULE (F.)

Return of Company in the of the Militia of the County of , dated the day of

Hundreds or Divisions.	Parishes.	Names of Men Serving.			Ages.	Classes.				
		Principals.	Substitutes.	Volunteers.		1st.	2nd.	3rd.	4th.	Last.
H.	Islington.	Samuel Jones.	...	...	32	...	—			
...	...	...	Thomas Gray.	...	24	...	...	...	—	
...	...	...	...	Thomas Smith.	26	—				
M.	H.	...	...	...	...	...	—			
...	...	...	...	...	...		—			
Total										

Signed, *A. B.*, Captain of Company.

SCHEDULE (G.)

RETURN of Private Militia serving for the County of ,

dated the day of

Description of Men.	No. of each.	Years of Service unexpired.					No. of Men in each Class.				
		1.	2.	3.	4.	5.	1st.	2nd.	3rd.	4th.	Last.
Principals . .											
Substitutes . .											
Volunteers . .											
Totals.											

A. B., Clerk to General Meetings.

N.B.—If the Militia of any county, riding, or place, is divided into more than one regiment, battalion, or corps, a separate return is to be made for each, and the description of the regiment, &c., put at the top of the return.

Form of Mortgage.

By virtue of the "Militia Law Amendment Act," 1854, we, *A. B.** the Chairman, and *C. D.* and *E. F.* Justices of the Peace, assembled at the Court of General or Quarter Sessions of the Peace for the county of [*or* the Mayor, Alderman, and Burgesses of the borough of , *or as the case may be*], in consideration of the sum of paid to the treasurer of the said county [*or* borough] by *A. B.* of for the purposes of the said act, do grant and assign unto the said *A. B.*, his executors, administrators, and assigns, such proportion of the [*here describe the rates or property intended to be mortgaged*] as the said sum of doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said to hold to the said *A. B.*, his executors, administrators, and assigns, from this day until the said sum of with interest at per centum per annum for the same, shall be fully paid and satisfied (the principal sum to be repaid within not less than years from the date hereof). In witness whereof we have hereunto set our Hands and Seals (*or* given under our Corporate Seal), this day of 18 .

(L.S.)

Form of Assignment of Mortgage.

I *A. B.* of in consideration of the sum of paid to me by *C. D.* of do hereby assign * to the said *C. D.*, his executors, administrators, and assigns, a certain mortgage, numbered , made by the Justices of the county of [*or* the Mayor, Aldermen, and Burgesses of the borough of *or as the case may be,*] bearing date the day of for securing the sum of and interest thereon, [*or, (if such transfer be by indorsement)* the within security,] and all my right and interest to and in the monies thereby secured, and the rates (*or* lands, tenements, and hereditaments,) thereby assigned. In witness whereof I have hereunto set my Hand and Seal this day of 18 .

(L.S.)

REPORT.

DESCRIPTIVE RETURN of committed to confinement at on the day of as an Absentee from the training of the Regiment of Militia.

Age - - - - - -	
Height - - - - - -	Feet. Inches.
Complexion - - - - -	
Hair - - - - - -	
Eyes - - - - - -	
Marks - - - - - -	
Probable date of enrolment, and where	
Probable date of absenting himself, and from what place - - -	
Name, occupation, and address of the person by whom apprehended†	
Particulars in the evidence on which the prisoner is committed, and showing whether he surrendered or was apprehended, and in what manner, and upon what grounds; and whether committed for safe custody only, or as a deserter under this act, and if so, for what period	

* In Ireland, the form runs T.A.B., Foreman of the Grand Jury of (or Lord Mayor and Town Council, *as the case may be,*) in consideration, &c.

† It is important for the public service, and for the interest of the prisoner, that this part of the return should be accurately filled up, and the details should be inserted by the magistrate in his own handwriting, or under his direction, by his clerk.

I do hereby certify, that the prisoner has been duly examined before me as to the circumstances herein stated, and has declared in my presence that he * absent himself from the before-mentioned corps.

_____ *Signature and Address of Magistrate.*

_____ *Signature of Prisoner.*

_____ *Signature of Informant.*

I certify, that I have inspected the prisoner, and consider him fit for military service. †

_____ *Signature of Military Medical Officer, or*
‡ *Private Medical Practitioner.*

* Insert "did" or "did not," as the case may be.

† Insert "fit" or unfit," as the case may be; and if unfit, state the cause of unfitness.

‡ No fee will be allowed to a private medical practitioner where a military medical officer is stationed, unless it is shown that his services were not available.

APPENDIX.

APPENDIX, No. 1.*

Promotions, Exchanges, and Retirement.

Although the following Warrant does not *expressly* repeal former regulations respecting promotion and retirement, it appears to do so virtually, as it speaks *in toto* of the future; however, it does not alter exchanges, which remain as heretofore.

Warrant regulating future Promotion and Retirement of Officers in the Army.

VICTORIA R.

Whereas We have approved the recommendations of the Commissioners, appointed by our authority to inquire into the several modes of promotion and retirement in our military forces: Our will and pleasure is, that from and after the date hereof, the following Rules shall be established for the future Promotion and Retirement of Officers in the Army, and that by these our rules our Commander-in-Chief shall govern himself in recommending Officers for promotion or retirement:—

PROMOTION.

1. That the rank of Field-Marshal be given without reference to seniority.

2. That general periodical brevets be for the future abolished.

3. That there shall be a fixed establishment, for the Guards and the Line, of 100 General Officers upon unattached pay, in addition to the General Officers who are Colonels of regiments, making in all 234, of whom 50 shall be Generals, 70 Lieutenant-Generals, and 114 Major-Generals.

4. That, until the existing establishment of General Officers be reduced to 234, the senior Colonels on the list shall be promoted, or the supernumerary previously promoted for distinguished service shall be admitted alternately, after the third vacancy on the fixed General Officers' list—this limitation being observed until the excess be reduced.

5. That the Major-Generals hereafter promoted for distinguished service, shall, after the number of Generals on the fixed establishment has been reduced to 234, be placed on the permanent General Officers' list, in the proportion of one Major-General for two vacancies—the second vacancy being filled by seniority from the Colonels' list.

* Referred to in page 84.

6. That those General-Officers in the receipt of the half-pay only of their last regimental commissions be not included in the 234 above-mentioned, but that their names be printed, according to their seniority, on the same list with the others as now, but with an asterisk prefixed to them.

7. That the rank of full Colonel be given to Officers, after serving for three years with the rank of Lieutenant-Colonel, in the actual command of regiments, or for the same period as second Lieutenant-Colonels of regiments, or as Major and Lieutenant-Colonel, or Major in the household cavalry, or as mounted officers of the Guards, or on the Staff in the following situations, viz.—Assistant Adjutant-General, Assistant Quartermaster General, Military Secretary (or Assistant Military Secretary, where there shall be no Military Secretary) to such General Officers alone as are exercising the supreme command on a station, or Commissioner to the head quarters of an allied army, or after serving six years with the rank of Lieutenant-Colonel as Equerry to the Sovereign.

8. That Field-Officers, commissioned as such before the 20th June, 1854, be allowed to rise by brevet, as under the regulations then in force; but no Officer promoted to the rank of Field-Officer on or after that date is to rise from the rank of Lieutenant-Colonel to that of Colonel, otherwise than by three years' service in the former rank, as above described, or as a reward for distinguished service, or by appointment to be Queen's Aide-de-Camp.

9. That in cases where Colonels shall be appointed, without regard to seniority, to commands as Major-Generals, their temporary rank, if they shall have conducted themselves to our satisfaction, may be made permanent after having held such commands for five years in peace, or after any shorter period in war, upon the recommendation of our Commander-in-Chief. That, in like manner, the temporary rank of General and Lieutenant-General may be given, whenever the convenience of the service requires it, and may be confirmed in a similar manner.

10. That, in addition to the Colonels promoted by seniority to be Major-Generals, Colonels shall be eligible for promotion to the rank of Major-General, and Major-Generals to the rank of Lieutenant-General, and Lieutenant-Generals to the rank of General, for distinguished services in the field.

In the case of Officers promoted to the rank of General Officers, as a reward for distinguished service in war, the recommendation in which the service of the officer shall be detailed shall be published in the general orders of the army, and in the Gazette, with a view to insure the responsibility attaching to an appointment thus made out of the regular course of army promotion.

11. That every vacancy on the fixed establishment of General Officers shall be filled by the promotion, when there is no supernumerary, of the senior Colonel qualified to succeed to the rank of Major-General, and to be placed on the fixed establishment, under the regulations now in force; and that vacancies in the ranks of General and Lieutenant-General be filled in the same manner.

If there be more than one supernumerary who has been promoted for distinguished service, the promotion of the senior Colonel shall take place on

every second vacancy only, until the supernumeraries be reduced, by the appointment alternately of a supernumerary, and the promotion of a Colonel.

12. That promotions shall be made in the ranks of Field-Officers below the rank of Colonel from time to time, or as vacancies occur in the Major-Generals' fixed establishment.

13. That any Captain, Major, or Lieutenant-Colonel may be rewarded by promotion for distinguished services in the field. In cases, however, where such promotion would deprive the Officer of regimental employment, by which the interests either of the service or of the Officer might be prejudiced, brevet rank may be given, to be converted into regimental (or substantive rank) at an early subsequent period.

14. That the commands of General Officers, and other situations on the staff, both at home and abroad, shall not be held for more than five years, unless by re-appointment.

15. That the privilege of selling out of the army, retaining the name of the Officer in the army list in italics, which is now confined to full Colonels and Officers having the Order of the Bath, be extended, *with the permission of the Commander-in-Chief in each case*, to all Field Officers.

16. That no Officer shall be promoted to the rank of Captain, until he shall have been two years an effective Subaltern.

17. That no Officer shall be promoted to the rank of Major until he shall have been six years effective as Subaltern or Captain.

18. *Assistant-Surgeon.*—No medical candidate who has not passed his examinations at the Royal College of Surgeons of London, Edinburgh, or Dublin, shall be eligible for the commission of Assistant-Surgeon; and he must have served as such on full pay five years before he shall be eligible for promotion to the rank of Staff Surgeon of the Second Class.

19. *Staff-Surgeons.*—Staff-Surgeons of the second class must have served ten years in the army, on full pay, before they shall be eligible for the next step of rank.

A *Staff-Surgeon* of the first class must have served three years at *home*, or two years *abroad* in this rank, before he shall be eligible for promotion.

20. *Deputy Inspector-General of Hospitals.*—A Deputy Inspector-General of Hospitals must have served five years at *home*, or three years *abroad* in this rank, before he shall be eligible for promotion to the highest rank of Inspector-General.

UNATTACHED PAY, RETIRED FULL-PAY, AND HALF-PAY.

It is our further will and pleasure, that the grants of unattached pay and other rates of pay to General Officers, not being Colonels of Regiments, and of retired full pay and of half-pay to Officers of our army, shall be regulated by this our Royal Warrant, to be administered and interpreted by our Secretary-at-War, as the sole and standing authority for regulating such grants.

Unattached Pay.

21. Officers removed from their commissions as Field-Officers in Regiments of Foot Guards, in consequence of being promoted to be General

Officers, shall receive unattached pay according to the following scale, viz.—Lieutenant-Colonel, £600 a year; Major, £550 a year.

22. Officers promoted to be General Officers from full or half-pay commissions in the line, shall, if duly qualified, receive unattached pay of £1 5s. a day.

23. The number of General Officers upon the establishment of unattached pay of £1 5s. a day, or upwards, not being Colonels of regiments, shall be limited to 100.

24. A General Officer being Colonel of a regiment, in the event of his regiment being reduced, may be placed, in the first instance, as supernumerary upon the said establishment of unattached pay, at £1 5s. a day; but shall fall into the vacancy that may occur therein, until re-appointed Colonel of a regiment.

25. A Colonel promoted to the rank of General Officer, as a reward for distinguished service in war, or in consequence of having held a command with temporary rank as General Officer, shall be placed, in the first instance, as supernumerary on the said establishment of unattached pay, at £400 a year, until he shall fall into a vacancy on the fixed establishment of General Officers.

26. An Officer now on the list of General Officers, whether on full or half-pay at the time of his promotion, but who is in excess of the limited number of 100, entitled to unattached pay of £1 5s. a day, or upwards, shall receive, if duly qualified by service, an allowance in lieu of unattached pay, at the rate of £400 a year; or, if Lieutenant-Colonel of cavalry at the time of his promotion, the nett full pay of that rank until elected to the establishment of unattached pay, at £1 5s. a day, or appointed to be Colonel of a Regiment.

27. To entitle an Officer to the unattached pay of a General Officer, or to the allowance in lieu of such unattached pay, such Officer must have actually *served six years* with the rank of a Regimental Field Officer, either with a regiment of the line, or in some other substantive military employment in the public service, or as Field Officer of the foot guards, or on the staff-appointment of Assistant Adjutant-General, Assistant Quarter-Master General, Military Secretary, (or Assistant Military Secretary, where there shall be no Military Secretary,) to such General Officers alone as are exercising the supreme command on a station, or as Commissioner to the head quarters of an allied army; or, having obtained the rank of Regimental Field Officer, shall have been obliged to go on half-pay upon account of reduction, or in consequence of ill-health contracted in the service, (as established by the report of a Board of Medical Officers,) or in consequence of wounds received in action, before he had served the six years above prescribed.

28. To the limitations contained in the preceding article, the following exceptions only will be admitted, viz.—

Appointment as Major-General on the staff.

Appointment to a Military Government.

In these cases the insufficiency of service as a Regimental Field Officer will not render an Officer ineligible for the unattached pay.

29. The benefit of unattached pay shall not be extended to any General

Officer who, when he last went upon half-pay, received the difference; nor to any Officer who went upon half-pay at his own request in time of war, before he had completed an aggregate full-pay service of thirty years, of which period six years shall have been with the rank of Regimental Field Officer; nor to any Officer who went upon half-pay, at his own request, in time of peace, before he had served six years with the rank of Regimental Field Officer.

Officers thus situated shall continue to receive the half-pay only of which they were in receipt at the time of their promotion to be General Officers.

Retired Full Pay.

30. The retired full-pay list of Field Officers and Captains shall be prospectively fixed at £60,000 a year; all Officers who were on the full-pay retirement previously to the Royal Warrant of October, 1840, being considered supernumerary to the establishment of £60,000.

31. The Colonels, Lieutenant-Colonels, Majors and Captains, allowed to retire upon full-pay, shall be selected and recommended to us by our Commander-in-Chief, and appointed according to their regimental and not according to their brevet rank; but no Officer shall be placed on the retired full-pay list, who has not served on full-pay for twenty-one years and upwards, unless he has been obliged to go upon half-pay in consequence of ill-health contracted in the service, (as established by the report of a Board of Medical Officers,) or in consequence of wounds received in action, before he had served the twenty-one years prescribed.

32. Each Officer placed on the retired full-pay list shall receive a step of brevet rank, together with the full-pay of the rank from which he retired; but such Officer cannot be further promoted.

33. Officers appointed to Veteran Battalions shall not, on their reduction or retirement therefrom, acquire any claim to retired full-pay.

Temporary Allowance in the nature of Half-Pay.

34. *Service of less than Three Years.*—An Officer, having served less than three years, will, *if reduced*, receive only a *temporary* allowance of half-pay, according to the following scale:—

Service on Full-Pay.	Temporary Allowance.
Under 1 year	for 1 year.
1, and under 2 years	for 2 years.
2, and under 3 years	for 3 years.

The *temporary* allowance ceases at the termination of the above-recited periods, or previously, if the Officer shall have been previously placed on full-pay.

35. *Re-appointment within five years.*—But an Officer, who has been placed on *temporary* half-pay, is eligible to be appointed to a full-pay commission, either by exchange or otherwise, provided his appointment take

place within *five* years after he has ceased to receive *temporary* half-pay, in which case his former service is allowed to reckon.

36. The exchange to full-pay, under the preceding article, may be made with a full-pay Officer entitled to half-pay.

37. *Sale of Commission.*—An Officer who has been reduced with only a *temporary* allowance, having purchased his commission, may receive the regulated price thereof from the public through our Secretary-at War, and the public shall be reimbursed by the sale of a first full-pay commission, which would otherwise have been conferred without purchase; but these sales shall not be required in any greater proportion than one for every two such vacated commissions.

Half-Pay.

38. *Liability to Forfeiture.*—The half-pay of the army is granted as a remuneration for past military services, and also as imposing an obligation on the Officer to return to his military duties whenever called upon; therefore, any Officer not obeying the call is liable to forfeit his half-pay.

39. *Wounds received in action.*—An Officer shall be entitled to be placed on the half-pay establishment, if compelled to retire in consequence of wounds received in action.

40. *Ill-health contracted on Duty.*—An Officer having served more than 3 years shall be entitled to be placed upon the half-pay establishment, if compelled to retire in consequence of ill-health contracted on duty, as certified by the Medical Board or Medical Officers to whom he has been referred for examination. Unless the result of such examination be received by our Commander-in-Chief and Secretary-at-War, he will be considered to have retired upon half-pay for his own convenience.

41. *Reduction after three years' service.*—An Officer having actually done duty in some regiment or corps, or in some other military capacity in the public service, for a period of at least 3 years, shall be entitled to be placed on the half-pay establishment on *reduction* from full pay.

42.—*Permanent half-pay only after twenty-one years' service.*—No Officer shall be permitted to retire upon permanent half-pay until after a full-pay service of 21 years, except on account of unfitness for service from wounds received in action, or from certified ill health contracted in and by military service.

43. *Garrison appointments.*—No garrison commission or appointment shall give an Officer any claim to half-pay on retirement.

44. *Residence of half-pay Officer.*—The residence of the half-pay Officer is to be stated every quarter in his Declaration, whether his half-pay be received by an agent or by himself.

45. *No right to sell or commute.*—No Officer on half-pay shall, of right, have a claim to sell or commute his half-pay; the permission shall be governed by such consideration of the individual case, as may induce our Commander-in-Chief and Secretary-at-War to recommend it.

46. *Sale of Commission by Officers having a claim to half-pay.*—If a subaltern Officer, whose service confers a claim to half-pay, be desirous of retiring

from the Army by the sale of his commission, the following rules should be observed:—

1. If he purchase his commission, the regulated price may be granted (whether he should be receiving half-pay or a temporary allowance) in the nature of half-pay.
2. If he did not purchase his commission, and had served less than 7 years on full pay in the army, he may be allowed to receive £100 for each year of service as a Commissioned Officer, not however exceeding the regulated price of the commission he held.
3. If a Non-Commissioned Officer shall have been promoted to the rank of an Ensign, or Cornet or Adjutant, he shall not have a claim to retire, by the sale of his commission, unless he shall have served in the Army as an Officer on full-pay upwards of one year, in which case he may be awarded the full price of the commission which he shall have received without purchase, or such portion thereof as, with reference to the length of his actual service, shall be deemed proper by our Commander-in-Chief and Secretary-at-War.

47. *Certain Officers who have been permitted to retire for their own convenience.*—An Officer of any of the under-mentioned ranks having entered the service since the termination of the war in 1815, and having been permitted to exchange to half-pay, not on account of ill-health, but for his private convenience, before he had served seven years on full-pay, shall be allowed only the old rate of half-pay specified in the following Schedule:—

	Cavalry.		Infantry.	
	New Rate.	Old Rate.	New Rate.	Old Rate.
	Per diem.	Per diem.	Per diem.	Per diem.
	s. d.	s. d.	s. d.	s. d.
Colonel	15 6	13 0	14 6	12 0
Lieutenant-Colonel	12 6	10 0	11 0	8 6
Major	10 0	8 0	9 6	7 6
Captain	7 6	5 6	7 0	5 0
Ditto of Infantry, having superior brevet rank, and provided he shall have served as Captain on full-pay for at least two years immediately before retirement to half-pay	. .	. .	8 0	. .
Ditto of Cavalry, with brevet rank, exchanging to half-pay after two years' full-pay service, with a Captain of Infantry	. .	. .	7 6	. .
Lieutenant	4 8	3 0	4 0	2 4
Ditto of Infantry, if commissioned seven years as a Lieutenant in the regular army, at the date of being placed upon half-pay	. .	. .	4 6	. .
Ditto of Cavalry, of five years' standing if entitled to reckon two years for the battle of Waterloo	5 2	. .	. .	. .
Cornet	3 6	2 6	. .	. .
Second Lieutenant and Ensign	. .	. .	3 0	1 10
Adjutant, if not commissioned as Lieutenant	4 0	4 0	4 0	4 0

If the retirement should be for the public convenience, by reduction, or otherwise, or in consequence of ill-health, certified by a Medical Board, the Officer will be allowed the new rate of half-pay.

48. *Promotions to unattached rank and half-pay.*—For every three vacancies occurring by death on the British half-pay list, in the ranks of Colonel and Lieutenant-Colonel, one Major serving upon full-pay may be promoted to the unattached rank and half-pay of a Lieutenant-Colonel of Infantry:—in like manner, for every three vacancies in the rank of Major, one Captain may be promoted from the full-pay to the unattached rank and half-pay of a Major; and for every three vacancies in the rank of Captain, one Lieutenant may be promoted to the unattached rank and half-pay of Captain.

The officers so promoted under this regulation shall retain their claims to pensions for their widows at the rate accorded to their new ranks.

The vacancies which these promotions will create on the full-pay list shall be in all cases filled from the half-pay list.

49. The additional £100 a year to twenty Lieutenant-Colonels on the former half-pay list, established by royal warrants, shall be discontinued, subject to existing interests.

Medical Officers.

50. *Rate of Half-pay.*—The rate of half-pay for a Medical Officer of the army shall in every case be determined by the service which he may have rendered upon full-pay, and the circumstances under which he may be placed upon half-pay.

51. *On Reduction.*—If a Medical Officer shall be placed upon half-pay by *reduction* of establishment, he shall be allowed the half-pay to which his services may entitle him, according to the following schedule:—

Rank of Reduced Medical Officers.	Rates of Half-pay after a service on Full-pay of														
	30 Years.			25, but under 30 Years.			20, but under 25 Years.			10, but under 20 Years.			Less than 10 Years.		
							Temporary until he can be recalled to Service.								
	Per diem.			Per diem.			Per diem.			Per diem.			Per diem.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Inspector-General of Hospitals	1	10	0	1	5	0	1	0	0						
Deputy Inspector-General of Hospitals	1	0	0	0	17	0	0	14	0	0	10	6	0	8	0
Staff Surgeon, first class	0	17	0	0	15	0	0	12	6	0	10	0	0	7	6
Regimental Surgeon and Staff Surgeon, second class	0	15	0	0	13	0	0	11	0	0	8	6	0	6	0
Assistant Surgeon	0	7	6	0	7	0	0	6	0	0	5	0	0	4	0

52. *From other Causes.*—If a Medical Officer shall be placed upon half-pay from any other cause than reduction of establishment, he shall be allowed

the half-pay to which his services may entitle him, according to the following schedule:—

Rank of Retired Medical Officers.	Rates of Half-pay after a service on Full-pay of														
	30 Years.			25, but under 30 Years.			20, but under 25 Years.			10, but under 20 Years.			Less than 10 Years.		
							Temporary until he can be recalled to Service.								
	Per diem.			Per diem			Per diem.			Per diem.			Per diem.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Inspector-General of Hospitals - - - -	1	0	0	0	15	0	0	12	0		. .			. .	
Deputy Inspector-General of Hospitals -	0	18	0	0	14	0	0	10	0	0	8	0	0	7	0
Staff Surgeon, first class - - - - -	0	16	0	0	13	0	0	9	6	0	7	6	0	6	6
Regimental Surgeon and Staff Surgeon, second class - - -	0	15	0	0	11	6	0	8	0	0	6	0	0	5	6
Assistant Surgeon- -	0	7	0	0	6	0	0	5	0	0	4	0	0	3	0

53. *Right to retire.*—Every Medical Officer who may have served upon full-pay for twenty-five years and upwards, shall have the right to retire upon half-pay, and may be recommended for the rate assigned to his rank and service in the schedule annexed to article 51, provided he shall have served three years in the rank from which he retires; but if he shall not have served three years in such rank, he shall receive only the rate attached to the rank from which he was last promoted.

If a Medical Officer shall have served thirty years on full-pay, including three in the rank from which he retires, or, not having served such three years, shall have served ten in the Colonies, or five with an Army in the field, in any rank, he may be allowed the rate of half-pay assigned to his rank in the schedule annexed to article 52; but it is not to be understood that this clause is intended to convey an authority to place any officer in retirement immediately subsequent to any promotion he may obtain.

Paymasters.

54. A Paymaster, who shall have served as a commissioned officer in other ranks, shall, on retiring from the situation of Paymaster, be allowed, after completing five years' service on full pay as Paymaster, to reckon previous service on full-pay as a commissioned officer as equivalent to that of Paymaster, according to the following scale, in establishing his claim to half-pay.

Five years' service in other ranks shall reckon as equivalent to	Two years' service as Paymaster.
Ten ditto ditto	Five ditto.
Fifteen ditto ditto	Seven ditto.

55. A Paymaster shall be allowed half-pay, according to the following scale, provided always, that our Secretary-at-War shall be satisfied with the manner in which the Paymaster shall have performed his duties.

If of less than five years' service on full-pay as Paymaster	The half-pay of the former regimental commission.
If of more than five years' service on full-pay as Paymaster	6s. a-day, or the half-pay of the former regimental commission.
If of more than ten years' service (including service in other ranks reckoned as above), but of which at least five shall have been on full-pay as Paymaster	8s. a-day.
If of more than fifteen years' service (including service in other ranks, reckoned as above)	10s. a-day.
If of more than twenty years' service, ditto .	13s. a-day.
If of more than thirty years' service, ditto . .	15s. a-day.

56. *Re-employment on Full-pay.*—An Officer on half-pay, who may have served less than five years as Paymaster, will be eligible for re-employment on full-pay, either in that situation or in his former rank; and, if restored to full-pay as Paymaster, his previous service will be allowed to reckon.

57. *Recall to Service as Paymaster.*—An Officer who may have served more than five years, and less than twenty years as Paymaster, and shall be receiving the half-pay of that commission, (viz. 6s., 8s., or 10s., a day,) will be liable to be recalled to full-pay in that appointment, if his health shall be found sufficiently good to enable him to resume his duties; and in case he shall decline the appointment, he shall be liable to revert to the half-pay of the commission which he held before he was appointed Paymaster, and shall be liable to re-employment on full-pay in his former rank.

58. *Unqualified Right to retire.*—Every Paymaster who shall have served in the Army an aggregate period of thirty years, of which twenty-five years' service has been on full-pay as Paymaster, may have an unqualified right to claim retirement.

No Paymaster shall be entitled to claim retirement on the ground of unfitness from ill health, after any period of service under thirty years, unless such unfitness for service shall be supported by medical certificates to the satisfaction of our Secretary-at-War.

Chaplains to the Forces.

59. Chaplains to the forces shall be entitled to half-pay, agreeably to the terms laid down in the following articles.

60. *Temporary Half-pay.*—A Chaplain to the forces, in case of reduction before he has completed six years' service on full-pay, may be allowed *temporary* half-pay at *five shillings* a day, for three years only, and be subject, of course, to a recall to employment during that period.

61. *Rates after certain Periods of Services.*—A Chaplain to the forces, having served more than six years on full-pay, may be placed on half-pay at the following rates, viz.—

	Per Diem. s.	d.
Under 15 years	5	0
Above 15, and under 20 years . . .	7	6
Above 20, and under 30 years . . .	10	0
Above 30 years	16	0

62. *Claim to Retirement.*—A Chaplain to the forces who has not completed fifteen years' service on full-pay at the date of reduction or retirement upon full-pay, shall be liable to be recalled to the service, or forfeit his half-pay if he declines, unless a case of disability from ill health contracted in the service be clearly established; but, after fifteen years' service on full-pay, he shall have an unqualified right to retire, under the terms specified in the preceding article.

63. *Garrison and other Chaplains.*—Chaplains in garrisons, or at certain stations, or at military establishments, having commissions under the Sign Manual, shall have their retired pay regulated by the warrants for the government of those establishments; or by the rules established for civil superannuations; but not being liable to sudden orders to serve abroad, their claim to retired or half-pay will in no case be an unqualified right.

Quartermasters.

64. *Rates of Half-pay.*—The rate of half-pay for a Quartermaster shall in all cases be determined by the service which the Officer may have rendered to the public as Quartermaster, or in any former military capacity.

65. *After previous Service as Non-commissioned Officer.*—If a Quartermaster shall have previously served at least five years as a Non-commissioned Officer, he shall, in case of being placed upon half-pay, receive the same, according to the following scale, viz.—

	Per Diem. s.	d.
Under 5 years' service as Quartermaster	3	0
Above 5 years' ditto	4	0
Above 10 years' ditto	5	0
Above 15 years' total service, of which 10 years' as a Quartermaster	5	6
Above 20 years' total service, of which 10 years' as a Quartermaster	6	0
Above 25 years' total service, of which 10 years' as a Quartermaster	7	0
Above 30 years' total service, of which 10 years' as a Quartermaster	8	0

66. *Unqualified Claim to retire.*—Every Quartermaster who shall have served for an aggregate period of thirty years, of which ten years as a Quartermaster, shall have an unqualified claim to retirement upon the highest rate of half-pay stated above, provided such retirement shall be recommended to our Secretary-at-War by the Commander-in-Chief.

67. *Medical Certificates.*—No Quartermaster shall be entitled to claim retirement after any period of service under 30 years' duration, upon the ground of ill health contracted in the service, unless such unfitness for service shall be supported by medical certificates satisfactory to our Commander-in-Chief and Secretary-at-War

68. *When to revert to former half-pay.*—A Quartermaster appointed to this situation from another commission in the army, shall, in case of reduction or retirement to half-pay before he shall have completed ten years' service as a Quartermaster, revert to the half-pay of his former commission; but after ten years' full pay service as Quartermaster, he shall be entitled to the higher rates of half-pay stated in article 65.

Purveyors to the Forces.

69. *Rate of half-pay.*—The rate of half-pay of a Purveyor to the Forces shall be—

	s.	d.	
After 10 years' service	5	0	a day
After 15 years' service	6	0	„
After 20 years' service	7	0	„
After 25 years' service	8	0	„
After 30 years' service	9	0	„

70. *Unqualified claim to retire.*—Every purveyor to the forces, who shall have served upon full-pay for thirty years and upwards, shall have the right to retire upon half-pay, provided that our Secretary-at-War shall be satisfied with the manner in which such purveyor shall have performed his duty.

But no purveyor to the forces shall be entitled to claim retirement after any period of service under thirty years' duration, upon the ground of ill-health contracted in the service, unless such unfitness for service shall be supported by medical certificates satisfactory to our Secretary-at-War.

Veterinary Surgeons.

71. *Rates of half-pay.*—The half-pay to be granted to a Veterinary Surgeon shall be regulated by his service on full-pay, according to the following scale, viz.—

In case of reduction before he has completed five years' service on full pay, he shall be entitled to *temporary* half-pay at 3s. 6d. a day for three years only, and be subject, of course, to a recall to employment during that period.

	Per Diem. s.	d.
Above 5 years' service as a Veterinary Surgeon .	5	0
Above 10 years' service . . . ditto	6	0
Above 15 years' service . . . ditto	7	0
Above 20 years' service . . . ditto	8	0
Above 25 years' service . . . ditto	10	0
Above 30 years' service . . . ditto	12	0

72. *Right to retire on half-pay.*—Every Veterinary Surgeon who shall have served upon full-pay for 25 years and upwards, or who may have served for 20 years, provided he have passed five years on foreign stations, shall have the right to retire upon half-pay, at the rates assigned to those periods of service in the 71st Article.

But no Veterinary Surgeon shall be entitled to claim retirement, after any period of service under 25 years' duration, upon the ground of ill health contracted in the service, unless such unfitness be supported by medical certificates satisfactory to our Commander-in-Chief and Secretary-at-War.

ADJUTANTS OF RECRUITING DISTRICTS.

73. Upon the reduction or retirement of an Adjutant of a recruiting district, under ten years' service as such, he shall be allowed only the half-pay of his last regimental commission.

Upon reduction or retirement, after the following periods of service as Adjutant of a recruiting district, the rate of half-pay shall be—

	s.	d.	
After 10 years' service	5	0	a day.
After 15 years' service	7	0	„
After 20 years' service	8	0	„

But in every instance in which the Officer has not completed a period of 21 years' service on full-pay in the Army, he shall be liable to be recalled to the service in his former rank.

Given at our Court at St. James's, this sixth day of October, 1854, in the eighteenth year of our reign.

By Her Majesty's command,

SIDNEY HERBERT.

EXCHANGES.*

In all cases of Exchanges between Officers on full pay, whether of cavalry or infantry, or from cavalry to infantry, the recommendations are to be signed by the Colonels or Commanding Officers of the respective regiments, and to be accompanied by a Declaration, signed by the individuals and certified by the Colonels or Commanding Officers of the regiments to which they respectively belong, stating that the exchange recommended does not originate in any regimental proceeding of any kind, or in any cause affecting the honour and character of the Officers, and that there are no grounds of personal objection which have, in the smallest degree, induced an application for an exchange, and by the following additional certificate:—

"That they do not intend to sell out, or retire upon half-pay after effecting such exchange, but that it is their *bonâ fide* intention to join immediately, and do duty with the corps to which they exchange, the leave of absence which may have been granted to either or both having been cancelled by such exchange."

* Referred to in page 84.

In Exchanges to half-pay, either with or without the difference, or from cavalry to infantry, the application is to be general and unconditional; and the Officer on full-pay will not be allowed to point out his successor, who will be indiscriminately selected by the Commander-in-Chief, without any previous notice to the parties.

APPENDIX, No. 2.*

Enlistment of Foreigners into the Regular Army.

Considerable inconvenience and expense having arisen where regiments, returning from foreign stations, have brought with them *foreigners*, who had been enlisted under special circumstances—particularly in regiments returning from the East Indies—*foreigners* who have been enlisted abroad by authority, are to be discharged, or transferred, previously to the embarkation of the regiment; and no person is allowed to accompany a corps returning from a foreign station, who is not entitled to his domicil, and finally to his pension, in this country. Those only are excepted who are enlisted under 1st Vic. c. 9, which allows, with the royal assent, one foreigner to every fifty natural-born subjects, or men entitled to the privileges of natural-born subjects. Such soldiers are held to be legally enlisted, but cannot be raised to a higher rank than that of Non-commissioned Officer.†

The "Regulations" concerning Recruiting are of importance to the Recruiting Officer, but of no general interest.

APPENDIX, No. 3.‡

Certificate to be given the Justice.

———— } I, one of Her Majesty's Justices of the Peace, of
To Wit. } do hereby certify, That, in my presence, all the foregoing questions were put to ; that the answers written opposite to them are those which he gave to me; and that the 40th and 46th Articles of the Articles of War were read over to him; that he took the oath of allegiance and fidelity; that he received the sum of on being attested this day; that he was not attested until twenty-four hours had elapsed after he received enlisting money; that the place where he swears that he enlisted is in the vicinity of my residence, or within the division of the district or place for which I act; that I am not an Officer in the Army; and that I have given him a Duplicate of this Certificate, signed with my name.

————, Signature of Justice.

* Form referred to in page 92.
† Queen's Regulations, 1844, page 239.
‡ Forms referred to in page 95.

DECLARATION TO BE MADE BY A SOLDIER RENEWING HIS SERVICE.

I, Number do declare, that I am at present (*or* was, *as the case may be*) in Captain company, in the regiment; that I enlisted on the day of for a term of years; that I am of the age of years; and that I will serve Her Majesty, Her Heirs, and Successors (*or* in the forces of the East India Company, *as the case may be*), for a further term of years (*to be filled up with eleven years in the infantry, and twelve in the cavalry or artillery, or other ordnance corps, and in the case of a soldier about to embark for foreign service, with such number of years as shall be required to complete a total service of twenty-one years in the infantry, or twenty-four in the cavalry or artillery or other ordnance corps*), provided my services should so long be required; and also for such further term, not exceeding two years, as shall be directed by the Commanding Officer on any foreign station.

Declared before me,

——— Signature of Soldier. ———

——— Signature of Witness.

APPENDIX, No. 4.*

RATES TO BE PAID FOR CARRIAGES.—MUTINY ACT, 1854, SEC. 74.

Distance under one mile is paid as a full mile.

Rates in *England, per mile*:—

For a waggon with four or more horses, or a wain with six oxen, or four oxen and two horses, one shilling.

For a waggon with narrow wheels, or any cart with four horses, carrying not less than 15 cwt., nine-pence.

For any other cart, with less than four horses, and not carrying 15 cwt., six-pence.

In *Ireland*:—

For every cwt. loaded on any wheel carriage, one half-penny *per* mile.

Also in *England*:—

Further additional rates, of 4d., 3d., or 2d. per mile, to the respective rates of 1s., 9d., or 6d., as may seem reasonable to the General Sessions, or to the Recorder of any city, &c. The order must specify the price of hay and oats at the nearest market town at the time of fixing such rates—the order not to endure beyond ten days after the next General Sessions—and

* Referred to in page 184.

to be valid, a copy—signed by the presiding Justice and one other Justice or the Recorder—must be sent to the Secretary-at-War within three days after the making thereof.

Also, in *England*, if the day's march exceeds fifteen miles, a further compensation is made by the Justice, not exceeding the above usual rate of hire.

The amount of additional rate must be inserted in the warrant by the Justice's own hand, and the date of the Order of Sessions, if by an Order of Sessions, and be given to the Officer as a voucher.

The rates are paid to the Constables, who give receipts on unstamped paper, in *Ireland*, to the owners or drivers; and, in all cases, one-third is paid before loading—in Ireland, if required, in the presence of a Justice or Constable.

In *England* 30 cwt. is the maximum weight.

In *Ireland* no car can be required to carry more than 6 cwt., or a dray 12 cwt., without consent of the owner.

In *Ireland* no carriage can be compelled to proceed with less weight than will produce 3d. per mile for a car, and 6d. per mile for a dray. The owner may require the loading to be first weighed, at his own expense, if without hindrance to the Queen's service.

In *Scotland* the taking carriages is regulated by the laws in force at the time of the union—at the rate of nine-pence per mile for a cart with one or two horses; and no such cart is required to carry more than 15 cwt.

On no account are these carriages to be stopped at turnpikes and bars.

In Dublin, twenty-four hours' notice is given of the march from the city, and then the Lord Mayor supplies the necessary vehicles out of the licensed cars and drays in the city and county of Dublin.

Country cars, drays, &c., coming to market in Ireland cannot be taken against the will of the owner for Army purposes.

APPENDIX, No. 5.*

Military Secretary.

It has been mentioned that the Officers on the personal staff of a General are the Military Secretary, Assistant Military Secretary, and Aides-de-camp. The station of the Military Secretary to the Commander-in-Chief is at the Horse-Guards. In conducting the business of the Army, the military correspondence is to pass through the Military Secretary, except such parts as relate to particular departments, viz.: the offices of the Adjutant-General, Quarter-Master-General, the Secretary-at-War, and the Master-General of the Ordnance. The Military Secretary at the Horse-Guards has a salary of £2000 per annum, in addition to his pay as a General Officer, and the Colonelcy of a regiment. He is aided in his duties by a large establishment of clerks paid for by the State. A Military Secretary abroad is only allowed on commands of importance, requiring the services of a Major-General.

* Referred to in page 23.

APPENDIX, No. 6.*

The following are only the regulations as to the *admission* of Gentlemen Cadets and Senior Students to the Royal Military College.

JUNIOR DEPARTMENT.

1. *First Class.*—The sons of all Officers in the Army, under the rank of Field Officers, including Surgeons and Paymasters, and the orphans of Officers of whatever rank in the Army, and of Commanders and Officers of superior rank thereto in the Navy, who have died in the service, and are proved to have left families in *pecuniary distress*, to pay £40 per annum.

Second Class.—The sons of Regimental Field Officers, and of Captains under three years' rank, and Commanders of the Navy, £50 per annum. The sons of Colonels and Lieutenant-Colonels, having corps, and of Captains of the Navy of three years' rank, £70 per annum. The sons of all Flag and General Officers, £80 per annum.

Third Class.—The sons of private gentlemen and noblemen, £125 per annum.

The sons of Officers of the Commissariat Department, and Paymaster-General's Department, are admissible to the institution, according to the classification of their respective ranks, upon the same footing as that already enjoyed by Surgeons, and by the staff of the Medical Department of the Army generally, as well as by the Paymasters.

In these rates (besides education) board, washing, and medical attendance are included.

The sons of Officers who have voluntarily retired on full-pay, or *received the difference* in so doing, as well as those who have sold their commissions, are not entitled to admission, except on the last-mentioned class.

Two brothers cannot be received on any class together at the college, as long as there are other candidates waiting for admission. The orphans of General and Field Officers, and of Admirals and Captains of the Royal Navy, whose families and connections are not proved to be in such straitened circumstances as fully to justify their omission on the lowest scale of contribution, must subscribe according to the rank held by the parent, at the time of his decease.

2. All applications are to be addressed by letter, to the Governor, at the institution, stating the christian and surname, and the exact age of the candidate, and the profession or condition in life of his parents. But an application cannot be received for the registry of a candidate, until he is ten years old.

3. No candidate can be admitted into the junior department of the Royal Military College, under the full age of thirteen years, nor above that of fifteen. A baptismal certificate, under the hand of the clergyman of the parish where he was born, if in the United Kingdom; or if the candidate was born abroad, such other proofs respecting his age as may be satisfactory to the Governor, must be transmitted with the application for admission.

* Referred to in p. 198.

4. Testimonials of conduct, in the following form, must be produced within one month before the admission of a candidate, from every master under whose tuition he may have been during the three years immediately preceding:—

"I do hereby certify that Mr. was under my care and instruction, from the day of 18 , to the day of 18 ; and that during that period I had reason to be satisfied with his general conduct and application to his studies. And I declare that I never knew him to be guilty of any immoral act, and that he was not removed from my care in consequence of any misconduct."

Each certificate, in this form, must also be attested and signed by the parent or guardian, as follows:—

"I certify, upon honour, the correctness of the above testimonial."

5. No candidate can be admitted into the Royal Military College, who labours under any difficulty of articulation, or under any bodily or organic defect, which may appear to incapacitate him for Her Majesty's service.

6. The parent or guardian is required to state, in the case of each candidate for admission, whether he has had the small-pox or cow-pox, and also whether he has had the measles. Vaccination is performed at the institution; but it is desirable that young gentlemen should have been vaccinated previously to their admission.

7. Every gentleman cadet is at first admitted upon a probation of twelve months; and if his conduct, during any part of that period, should make it obvious that his longer stay would be hurtful to the institution, or wholly unprofitable to him, he will be sent back to his parent or guardian.

8. There are two examinations for admission; and parents or guardians are at liberty to choose that which is best adapted to the previous education of the candidate. The one examination comprehends the first four rules of Arithmetic, simple and compound, and construing Cornelius Nepos or Cæsar, in prose; and Virgil or Ovid in verse. The other comprehends arithmetic, as high as the Rule of Three; together with Vulgar and Decimal Fractions. Writing, spelling, and the construction of an English sentence, form part of both examinations.

9. If a candidate is found deficient in any of these elementary parts of learning, his admission into the college must be deferred until he is better qualified.

Senior Department.

1. A candidate for admission to the senior department of the college, must be a Commissioned Officer in the Army, and must have completed the twenty-first year of his age. He must have actually served as a Commissioned Officer with his regiment, three years abroad, or four years at home, unless he should have been reduced to half-pay before the completion of such period, when his claim will be considered.

2. His application (addressed to the Governor of the College) must be supported by satisfactory testimonials of character and conduct; as likewise of his being well grounded in the duties of the particular branch of service to which he belongs.

3. These testimonials must be from the Officer commanding the regiment to which he is serving; or if on half-pay, from an Officer of rank in the service.

4. Every Officer, on joining the senior department, will be subject to an examination as follows; if deficient therein, he cannot be received into the institution:—

I. In Arithmetic, he must be acquainted with the first four rules, simple and compound proportion, fractions, and the use of logarithms.

II. With Algebra, up to quadratic equations, inclusive.

III. In Languages, he must have a knowledge of Latin, or French, or German, so as to be acquainted with the construction of one of them.

IV. In Fortification, he will be reqnired to trace the magistral line of a front of fortification, according to the first system of Vauban; the profile of a field parapet; and show that he has received instruction in the use of mathematical drawing instruments.

5. The time prescribed for the course of education at the senior department is two years from the date of admission of each Officer: unless he has been educated at the junior department, in which case the period allowed is one year and a half only.

6. The student is examined every six months, and if deficient, is recommended to join his regiment.

7. Certificates of proficiency are given to those closing their residence with satisfaction.

8. The number of students is limited to fifteen.

9, 10, and 11. The annual subscription is paid in advance; at present it is 30 guineas, with £2 to the library fund.

There are other regulations which it is thought unnecessary to insert.

APPENDIX. No. 7.

List of Military Crimes and Punishments.

Gen. C. M.	means	General Court-Martial.
Dis. C. M.	„	District „
Gar. C. M.	„	Garrison „
Reg. C. M.	„	Regimental „
Div. C. M.	„	Divisional „

OFFENCE.	TRIBUNAL.	PUNISHMENT.
Divine Worship.—Speaking against the Christian Faith.	Civil Magistrate.	According to law.
Not regularly attending or being wilfully absent from Divine Worship, or misbehaving thereat, or swearing.	Gen. C. M., if an officer. Reg. ditto, if a soldier.	Public reprimand. 1st offence, 1s.; 2nd do. 1s. and twelve hours confinement.
Profaning place dedicated to Divine Worship, or offering violence to any minister.	Officer—Gen. C.M. Soldier—Gen. Dis. or Gar. C. M.	Discretionary. Ditto.
Commissioned Chaplain absent from duty.	Gen. C. M.	Ditto.
Ditto, guilty of conduct derogating from his sacred character.	Ditto.	Discharge from office.
Mutiny and Insubordination. — Exciting, causing, or joining any Mutiny, or being present, not using endeavours to suppress the same, or concealing knowledge of.	Ditto.	Officer—death. Soldier—death, transportation, or penal servitude.
Striking superior, or using violence to him in the execution of his duty, or in prison doing the same to visitor or superior.	Ditto.	Ditto.
Disobeying lawful commands.	Ditto.	Ditto.
Traitorous or disrespectful word against the Queen or Royal Family.	Officer—Gen. C.M. Soldier—Gen. Dis. or Gar. C. M.	Cashiering. According to usage.
In a fray, refusing to go into arrest, or drawing a sword upon or offering violence to officer ordering it (though of inferior rank.)	Ditto.	Ditto.
Contempt or disrespect to, or speaking hurtful or dishonorable words of Commander-in-Chief.	Officer—Gen. C.M. Non-com. Officer or Soldier—Gen. Dis. Gar. or Reg. C. M.	Cashiering, or other punishment. Discretionary.

OFFENCE.	TRIBUNAL.	PUNISHMENT.
*Desertion.**	Officer—Gen. C.M.	Death, or less punishment, at discretion.
	Soldier—Gen.C.M.	Ditto.
	If tried by a Dis. or Gar. C. M.	Any punishment the court is competent to award.
Persuading to desert.	Officer—Gen. C.M.	Cashiering,
	Soldier—Gen. Dis. or Gar. C. M.	According to the power of the court.
Harbouring deserter.	Ditto.	Ditto.
Fraudulent confession of desertion.	Ditto.	Ditto.
Any soldier, absent without leave, or without a pass, being more than one mile from barracks.	Gen. or other C. M.	According to power of court, and loss of pay on absent days.
Absence without leave for less than five days, in addition to any other minor offence, without accounting for absence.	Com. Officer.	Punishment for the minor offence, and imprisonment for 168 hours, with or without hard labour or solitary confinement.†
Holding correspondence with, giving intelligence, relieving, harbouring, or protecting an enemy.	Gen. C. M.	Death, transportation, penal servitude, or other punishment.
Misbehaving before an enemy, shamefully abandoning or giving up post, &c., or compelling any person to do so.	Ditto.	Ditto.
Leaving Commanding Officer or post for plunder.	Ditto.	Ditto.
Treacherously making known the watch-word.	Ditto.	Ditto.
Intentionally creating false alarms.	Ditto.	Ditto.
Casting away arms, &c., before enemy.	Ditto.	Ditto.
Sentinel sleeping on or leaving post.	Ditto.	Ditto.
Violence to provision bringers, force safeguard, or house-breaking or plunder when on foreign service.	Ditto.	Ditto.

* Enlisting in any other corps, without a discharge from a former corps, is punished as desertion. Pay, during the absence of the deserter, as well as all rewards, past and future, are forfeited, unless restored on good conduct by the Commander-in-Chief.

† He may also be condemned to forfeit pay during absence and imprisonment, but in such case may demand a Court-Martial.

OFFENCE.	TRIBUNAL.	PUNISHMENT.
Sending flag of truce without authority.	Officer—Gen. C.M. Soldier—Gen. Dis. or Gar. C.M.	Cashiering. According to the powers of the court and Mutiny Act, and usage of the service.
Giving wrong parole or watch-word.	Ditto.	Ditto.
In the field, creating unnecessary alarm in the vicinity or rear of the army, by reports or letters.	Ditto.	Ditto.
Creating alarm or despondency in or before going into action.	Ditto.	Ditto.
Making disclosures concerning the army in the field, injurious to the service.	Ditto.	Ditto.
Leaving the ranks without orders.	Ditto.	Ditto.
Leaving post, &c.; being improperly taken prisoner.	Ditto.	Ditto.
Irregularly appropriating for his own corps army supplies.	Ditto.	Ditto.
Conniving at the exactions of suttlers, or taking profit out of the sale of provisions, &c., in garrison, &c.	Ditto.	Ditto.
Impeding or refusing to aid the Provost-Marshal.	Ditto.	Ditto.
Breaking prison or arrest.	Ditto.	Ditto.
Not appearing on parade or rendezvous, or going thence without leave, or quitting his platoon or division without urgent necessity.	Officer—Gen. C.M. Soldier—Gen. Dis. Gar. & Reg. C. M.	Cashiering. According to the degree of the offence.
Creating false alarms in the *British Isles.*	Ditto.	Ditto.
Failing to make report of a prisoner's commitment.	Ditto.	Ditto.
Releasing or suffering any prisoner to escape, without authority.	Ditto.	Ditto.
Unnecessarily detaining without bringing to trial any prisoner.	Ditto.	Ditto.
Neglecting any garrison or other orders.	Ditto.	Ditto.

OFFENCE.	TRIBUNAL.	PUNISHMENT.
Drunk on duty.	Officer—Gen. C.M. Soldier—Gen. Dis. or Gar. C. M.	Cashiering. One penny per day pay forfeit for thirty days, in addition to other punishment.
Drunk on march.	Soldier—any C. M.	Ditto.
Habitual drunkenness.*	Reg. or Dis. C. M.	One penny per day, for period not exceeding six months.
Ditto.	Before Dis. or Gar. C. M.	Ditto, for not less than six months, and more than two years, in addition to other punishment.
Embezzlement and peculation, or conniving at the same, or receiving goods knowing them to be stolen.	Gen. C. M.	Transportation for life, fourteen years, or penal servitude.
Ditto.	Soldier—before a Dis. or Gar. C.M.	Same punishment as for disgraceful conduct.
Conduct unbecoming an officer and gentlemen.	Gen. C. M.	Cashiering.
Malingering, or misbehaving in Hospital.		Same as for disgraceful conduct.
Becoming maimed or mutilated, except by wounds in action.	Soldier—Gen. Dis. or Gar. C. M.	Same as for discraceful conduct, and in addition forfeiture of all additional pay, good conduct, ditto, and pension.
Mutilating another soldier to render him unfit for service.	Ditto.	Same as for disgraceful conduct.
Tampering with the eyes to render soldier unfit for service.	Ditto.	Ditto.
Stealing, peculation, or receiving money, goods, or stores, knowing them to be stolen.	Ditto.	Corporeal or other punment, according to the power of the court; forfeiture of pension, of additional pay, good conduct pay, and if tried by a Gen. C. M. liability to general service.

* Four times drunk in twelve months, and twice on duty or march, constitutes habitual drunkenness for first offence. *Twice* drunk within six months of previous conviction; or once drunk on duty, and after the same, constitutes a second offence of habitual drunkenness.

OFFENCE.	TRIBUNAL.	PUNISHMENT.
Giving false returns or reports.	Officer—Gen. C.M. Soldier—Gen. Dis. or Gar. C. M.	Cashiering. Corporeal punishment, imprisonment, &c., and in addition forfeiture of pension, additional or good conduct pay; and if tried by a Gen. C. M. may be liable to general service.
Making false musters.	Ditto.	Ditto.
Endeavouring to obtain any military advantage by a false document, or *suppressio veri.*	Ditto.	Ditto.
Being privy to any of the above last-mentioned offences.	Ditto.	Ditto.
Intentionally making false returns of army stores, &c., or by any false document conniving at their embezzlement, or by producing false paper misapplying public money.	Ditto.	Ditto.
By any concealment or wilful omission evade the true spirit and meaning of these points.	Ditto.	Ditto.
Officer signing papers intended as vouchers, and not filled up.	Gen. C. M.	Court-Martial.
Demanding billets for more than his effective men, or quartering wives, children, or servants without the occupier's consent, or taking money for freeing billets.	Officer—Gen. C.M. Soldier—Gen. Dis. or Gar. C. M.	Cashiering. According to power of court, and usage of service.
Ill-treating landlords; refusing reparation.	Officer—Gen. C.M. Soldier Gen. Dis. Gar. or Reg C. M.	Cashiering. According to the nature of the offence.
Officer commanding corps not clearing quarters and billets, and settling accounts at the end of every four days, or before, if troops do not remain four days.	Ditto.	Ditto.
Overloading pressed carriages, ill-treatment in respect of them; improperly placing soldiers, &c., on them; refusing to certify sums due for them, and the name of the corps.	Ditto.	Ditto.
Willfully refusing or neglecting to hand over offenders against the law to the civil power, or to aid their apprehension.	Officer—Gen. C.M. Soldier—Gen. Dis. and Gar. C. M.	Cashiering. According to the offence

OFFENCE.	TRIBUNAL.	PUNISHMENT.
Protecting any person against his creditors on pretence that he is a soldier, or unlawfully protecting soldiers not on duty.	Soldier—Gen. Dis. and Gar. C. M.	According to the offence
Promoting or accepting a challenge, acting as second, being privy to a duel and not preventing it; upbraiding another for refusing or not giving a challenge; opposing an honourable adjustment.	Officer—Gen. C.M.	Cashiering, or other punishment.
But if an officer who has been convicted of any of the last-mentioned offences had strenuously exerted himself to effect an honourable adjustment then.	Ditto.	Any punishment less than cashiering.
Any one on guard knowingly and willingly suffering any to go forth to fight a duel.	Officer—Gen. C.M. Soldier—Gen. Dis. Gar. Reg. or other C. M.	Cashiering, or lesser punishment. According to nature of offence.
Striking or ill-treating a soldier.	Ditto.	Ditto.
Hiring, or conniving at hiring, another to do duty.	Ditto.	Ditto.
Selling, losing, &c., arms, &c., or making away with or pawning medal, or ill-treating horse; committing waste or spoil, except by order of Commander-in-Chief.	Ditto.	Ditto.
Found guilty of felony by the civil power.	Ditto.	To forfeit additional pay, good conduct do., and pension, but may be restored on good and faithful service.

All crimes not capital, and prejudicial to good order and military discipline, &c., not above specified, may be taken cognizance of by Courts-Martial.

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February 1855.

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